



NIC Member Brief: UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

June 2026

The purpose of this document is to provide information to members on UNDRIP and start the conversation on how we approach this aspect of the Water Act Review.

Snapshot

- The Water Act 2007 requires its review to identify opportunities to promote the principles of UNDRIP. The Review to date is shaping up to have this as a major focus.
- Technically, UNDRIP is a non-binding declaration, and therefore not expressly legally enforceable on UN Member Countries, and Countries do not ratify it as they would a convention or treaty.
- However, international law is more complex than that. Caution is advised on dismissing it as “non-binding”, as it does carry considerable, and increasing, weight.
- Australia initially voted against UNDRIP in 2007, but announced support in 2009. There has been increasing focus on Australia doing more to meet the principles of UNDRIP.
- Dr Teagan Shields has been appointed as First Nations advisor for the Review. Key areas of focus already published include:
 - Shared decision-making and governance.
 - Recognition of rights and self-determination.
 - Protecting Cultural and spiritual water and water places.
 - Better outcomes for communities, especially with climate change and water quality.
 - Accountability, complaints and fair processes.
- NIC needs to consider the risks/issues, opportunities and our strategy as this will be a key element of the Review.

Context

The second statutory review of the Water Act 2007 is currently underway (herein, the Review).

In accordance with section 253 of the Act:

*The review must also identify opportunities under this Act to promote the principles set out in the **United Nations Declaration on the Rights of Indigenous Peoples**, being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007.*

The terms of reference¹ includes other matters, however, the emphasis on UNDRIP in the Act means we can expect it to be a focus of the review, and important for NIC to have a comprehensive understanding of.

253 Review of operation of Act

- (1) Before the end of 2027, the Minister must cause to be conducted a review of:
 - (a) the operation of this Act; and
 - (b) the extent to which the objects of this Act have been achieved.
- (1A) The review must also identify opportunities under this Act to promote the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, being the Resolution adopted by the General Assembly of the United Nations on 13 September 2007.

Note: The text of United Nations General Assembly resolutions could in 2023 be accessed through the United Nations' website (<https://www.un.org>).
- (2) The terms of reference for the review are to be determined by the Minister in consultation with the States.
- (3) The review must be undertaken in consultation with the States.
- (4) The Minister must cause to be prepared a written report of the review.
- (5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Background

The United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) was adopted by the UN General Assembly on 13 September 2007.

UNDRIP is a framework for recognising, protecting and promoting the rights of Indigenous peoples. UNDRIP contains **46** articles, and they can be categorised into 4 key principles:

1. Self-determination.
2. Participation in decision-making.
3. Respect for and protection of Culture.
4. Equality and non-discrimination.

The full document is available here.²

Articles particularly relevant to water management include:

Article	
3	<i>Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</i>
4	<i>Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.</i>
11	<i>Indigenous peoples have the right to practise and revitalize their cultural traditions and customs...</i>
18	<i>Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.</i>

¹ [Second Statutory Review of the Water Act 2007 Terms of Reference](#)

² [UNDRIP_E_web.pdf](#)



19	States shall consult and cooperate in good faith with the indigenous peoples concerned 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.
20	Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.
25	Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
26	<p>Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</p> <p>Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.</p> <p>States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.</p>
27	States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.
28	<p>Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.</p> <p>Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.</p>
29	Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
32	<p>Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.</p> <p>States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or</p>



	<p><i>territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.</i></p> <p><i>States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</i></p>
--	---

Other relevant articles:

Article	
Preamble	<i>Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration...</i>
46	<p><i>Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.</i></p> <p><i>In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.</i></p> <p><i>The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.</i></p>

UNDRIP was adopted with 144 votes in favour, 11 abstentions and **four States against (Australia, Canada, New Zealand and the USA)**. All four countries have since endorsed UNDRIP in 2009, 2010, 2010 and 2011 respectively.

International law

To properly understand UNDRIP, it is important to be across some basics of international law.

International law comprises both **hard law** and **soft law** instruments.

Hard law refers to legal rules that are formally binding on states. These obligations arise primarily through instruments such as treaties, conventions, agreements and customary international law.

Soft law refers to instruments that are not legally binding in themselves but nevertheless influence state behaviour, policy development, and legal interpretation. Soft law includes declarations, resolutions, guidelines, and principles adopted by international organisations. While these instruments do not create enforceable legal obligations, they



can establish normative standards, and contribute to the development of customary international law over time.

The role of **Customary International Law** (CIL) is particularly relevant here. CIL develops when states engage in a consistent and widespread practice and do so from a belief that the practice is legally required or permitted under international law. Unlike treaties, customary international law does not require formal negotiation, signature or ratification. Once a rule of CIL is established, it is generally binding on all states, regardless of whether they have expressly agreed to it. It stands as a primary source of international law under Article 38 of the Statute of the International Court of Justice, alongside treaties and general principles of law. This is a way soft law can become hard law.

One other important point is that the name / title of an instrument does not necessarily determine its legal effect – it's the substance. While legally binding instruments typically include treaties, conventions, agreements and protocols – and non-binding instruments are declarations or guidelines – the title alone is not the determining factor.

UNDRIP

UNDRIP itself is technically a **soft law instrument**. It is a **non-binding declaration** of the UN General Assembly. Put simply, it is not legally enforceable on UN Member Countries.

Unlike a treaty or agreement, **countries are not required to sign or complete ratification** type procedures (such as incorporating into domestic law). Rather, countries can express support for the declaration and refer to it a standard or reference point to guide policy, legislation, constitutional changes or court decisions - if desired.

This said, while not a binding agreement, UNDRIP does reflect an international consensus on the rights of Indigenous peoples. It has been adopted into law of many countries, heavily relied on in courts, and has come to carry much weight / significance. Many principles are also derived from instruments which do carry legal force (hard law), and some of the rights recognised in UNDRIP may reflect existing customary international law (hard law) or contribute to its development over time through consistent state practice and acceptance as law.

Therefore – **caution is advised on dismissing it as “non-binding”, as this does not mean it lacks legal significance.**

Adoption

If a country wants UNDRIP to have legal force domestically, that country must pass legislation or otherwise incorporate the specific principles into national law (i.e. it is not automatic). Simply **supporting the declaration does not automatically make it legally binding within that country.**

A number of countries have implemented UNDRIP into law, while others are developing non-legislative ways forward. Examples range from amendments to constitutions, policy-based approaches, or enhancing existing systems of recognising Indigenous rights.

Australia

Australia formally announced support for the Declaration on 3 April 2009.



Overall, UNDRIP has not been formally incorporated into Australian domestic law. However, according to the Attorney-General's Department, *'as a matter of policy, though, Australia supports the Declaration and shares the declaration's underlying commitment to delivering real and lasting improvements for First Nations people[s] and their communities'*.

There have been three Universal Periodic Reviews (UPR) of Australia's human rights record, and these have included consideration about the implementation of UNDRIP. The first was in January 2010, and recommendations included that the Government conduct an audit of its federal legislation for compliance with UNDRIP.

The third UPR, in January 2021, resulted in 5 recommendations, of which Australia accepted 2 (*take steps in consultation with Aboriginal and Torres Strait Islander peoples and the representative bodies to implement UNDRIP in law, policy and practice; and implement the principles of UNDRIP through programs which make the rights of Indigenous peoples effective, in close consultation with them*). However, Australia rejected the others (including to *develop a national action plan to implement the principles in UNDRIP, and incorporate UNDRIP 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 [2011 (Cth)]*).

In March 2022, Lidia Thorpe introduced a private Senator's Bill - *United Nations Declaration on the Rights of Indigenous Peoples Bill 2022* - to establish a framework for the implementation of UNDRIP in Australia.

In 2023, there was a Parliamentary Inquiry into the application of UNDRIP in Australia.³ Key points are outlined below:

UNDRIP is said to be consistent with, and reinforcing of, existing, universal human rights instruments. The Australian Attorney-General's Department has said that *'the Declaration reflects how a number of existing human rights standards under international law apply to the particular situation of Indigenous peoples'*.

The Australian Human Rights Commission (AHRC) noted in the 2023 Parliamentary Inquiry 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'*.

Experts to the Inquiry described: *"Accordingly, the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples."*

New Zealand

New Zealand has similarly not incorporated the Declaration into law. However, it has been incorporated in other ways, including through policy and judicial forms, interconnections with the Treaty of Waitangi, referenced in the Supreme Court of New Zealand and extensively in rulings of

³ [Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia – Parliament of Australia](#)



the Waitangi Tribunal. In March 2019, the New Zealand Government commenced a process to develop a National Action Plan, which was later put on hold.

The New Zealand approach has primarily been a policy rather than legal model.

Canada

On 21 June 2021 the *United Nations Declaration on the Rights of Indigenous Peoples Act* (Canada) came into force. The Act sets out binding requirements on Canada’s Federal Government to implement UNDRIP, including: ensuring the consistency of federal laws with the Declaration; developing an action plan to implement UNDRIP in consultation with First Nations peoples, and developing Annual Progress Reports to be submitted to Parliament.

How this fits with the Water Act Review

What we know so far

Dr Teagan Shields has been appointed as First Nations advisor for the Review, and targeted First-Nations consultation has commenced.

An initial document has been published on matters relating to UNDRIP, titled “*Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples’ water rights through the review of the Water Act 2007 (Cth)*”.⁴

Key themes focused on in the consultation include”

- Shared decision-making and governance.
- Recognition of rights and self-determination.
- Protecting Cultural and spiritual water and water places.
- Better outcomes for communities, especially with climate change and water quality.
- Accountability, complaints and fair processes.

Theme	Extracts
Shared decision-making and governance	<p><i>Aboriginal and Torres Strait Islander peoples have told the Australian Government that they want to be active partners—not stakeholders.</i></p> <p><i>For Aboriginal and Torres Strait Islander peoples water rights are not only about access. Reforms must embed priorities for water quality, the condition of waterways (such as connectivity of rivers, aquifers, and groundwater-dependent ecosystems), and the ability to continue Cultural practices.</i></p>
Recognition of rights and self-determination	<p><i>The Water Act recognises Aboriginal and Torres Strait Islander water related values and customary uses but does not recognise Aboriginal and Torres Strait Islander peoples as having rights in water.</i></p> <p><i>The Water Act does not clearly reflect key principles from the UNDRIP, such as self-determination and Free, Prior and Informed Consent.</i></p>

⁴ [Strong Voices, Healthy Waters: upholding Aboriginal and Torres Strait Islander peoples’ water rights through the review of the Water Act 2007 \(Cth\).](#)



	<p><i>Aboriginal and Torres Strait Islander peoples are seeking a more complete and connected approach to water—one that:</i></p> <ul style="list-style-type: none"> • <i>Recognises rights and self-determination.</i> • <i>Respects Free, Prior and Informed Consent in decisions affecting water and Country.</i> • <i>Acknowledges Cultural, social, spiritual, economic and environmental values.</i> • <i>Acknowledges the deep connections between land, water, sky and wellbeing.</i>
Protecting Cultural and spiritual water and water places	<p><i>The review of the Water Act provides an opportunity to formally recognise Aboriginal and Torres Strait Islander peoples’ customs and obligations around water, including the significance of Cultural water.</i></p>
Better outcomes for communities, especially with climate change and water quality	<p><i>The review is an opportunity to:</i></p> <ul style="list-style-type: none"> • <i>Embed strong governance mechanisms that guarantee Aboriginal and Torres Strait Islander participation in water planning and decision making.</i> • <i>Strengthen compliance and accountability frameworks to ensure water rules are enforced consistently and equitably.</i> • <i>Evaluate whether existing funding programs are building real capacity, ownership, and climate resilience, not short term project dependency.</i>
Accountability, complaints and fair processes	<p><i>In contrast to other government frameworks—such as the Native Title Act 1993 and Corporations (Aboriginal and Torres Strait Islander) Act 2006—the Water Act does not contain explicit or enforceable provisions that:</i></p> <ul style="list-style-type: none"> • <i>Require culturally appropriate engagement.</i> • <i>Embed Country and Cultural values as determinative considerations in decision making.</i> • <i>Provide accessible pathways for review, enforcement, and redress where harm occurs</i>

Key issues

We can anticipate potential issues to include:

- **Mixed expectations** on what supporting UNDRIP may mean in practice
- **Definition** of key terms, such as FPIC – while we have been assured this does not mean veto power, the word ‘consent’ has caused concern, and there are multiple interpretations
- Potential further **changes to governance or access arrangements**
- Integration of traditional cultural lores with established western laws, causing confusion or **mixed/duplicated systems**
- **Risk of division** amongst stakeholders or attempts to antagonise
- Many issues are **beyond the scope of water management** instruments alone to address, and would require constitutional or other changes to establish the necessary structures, institutions and legislative frameworks (which has not occurred)
- **Little recognition of status quo** of how the current systems of water management seek to achieve cultural outcomes
- **Focus on entitlement ownership** rather than broader outcomes
- **Several moving parts** within the current water management framework – e.g. Basin Plan, Water Act, NWA



- **Jurisdictional issues** – with differences across states
- **Applicability to Australian context**

NIC Strategy

The NIC Strategy will need to be developed with members. This is the start of a conversation. Key considerations include:

- UNDRIP is an established, long-standing, international declaration – it is almost certainly not within our scope to change UNDRIP itself
- It is written in the Water Act to *identify opportunities under this Act to promote the principles set out in the UNDRIP* – not considering UNDRIP is therefore out of scope

What could be helpful is:

- **Being constructive** to identify opportunities to practically promote UNDRIP in a manner that is mutually-agreeable between stakeholders
 - Identify the articles in UNDRIP we do support, and where possible/appropriate, opportunities for those to be better reflected
 - Exploring both legislative and non-legislative pathways forward – e.g. programs that could promote the principles within the existing legislative framework
- **Urging clarification** of key terms, such as via definitions, to minimise risk of confusion or varied expectations if adopted
 - When the principles apply – or not, is this equal status or elevated status;
 - Definitions of:
 - ‘consent’
 - ‘authority’
 - ‘rights’
- **Contributing to solutions** – such as exploring how Indigenous rights can coexist with other rights – and contributing to the ways of thinking on this
- **Contributing knowledge** to ensure clear understanding of the status quo
- Maintaining a firm opposition to attempts of Governments, departments or other stakeholders to be divisive or antagonistic by calling this out as required, and abiding by this ourselves.
- **Seeking to partner with others** – specifically First Nations where possible – to minimise divisiveness and ensure we are informed
- **Being at the table** – by being constructive, respectful, and informed.

As always, our objectives will centre on protecting the water property rights framework, as captured by our Guiding Principles and relevant policy position statements.

Questions for members:

- What risks/issues and opportunities do you see?
- What should our strategy involve?
- How do we move forward? What next?

