



human
rights

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INDIGENOUS LAW CENTRE

16 May 2008

The Hon Kevin Rudd MP
Prime Minister
Parliament House
CANBERRA ACT 2600

By Mail

And to:

The Hon Stephen Smith MP
Minister for Foreign Affairs

By Email: Stephen.Smith.MP@aph.gov.au

The Hon Robert McClelland MP
Attorney General of Australia

By email: R.McClelland.MP@aph.gov.au

The Hon Jenny Macklin MP
Minister for Families, Housing, Community Services and Indigenous Affairs
By email: JMacklin.MP@aph.gov.au

Dear Mr Rudd, Mr Smith, Mr McClelland and Ms Macklin

UN Declaration on the Rights of Indigenous Peoples

The Human Rights Law Resource Centre (**HRLRC**) and the Indigenous Law Centre (**ILC**) welcome the Australian Government's recent statement that it is consulting with stakeholders about reversing Australia's opposition to the *UN Declaration on the Rights of Indigenous Peoples* (**Declaration**).

The HRLRC and the ILC, together with the list of organisations contained in the attached schedule, strongly support endorsement of the Declaration by the Australian Government. Endorsement of the Declaration would send a strong message to Indigenous Australians, and indeed to the international community, that the Australian Government remains committed to respect the human rights of all Australians and its intention to 'close the gap' and improve the lives of Indigenous peoples.

The Declaration represents an important standard for the treatment of Indigenous peoples. Significantly, the Declaration will enhance harmonious and cooperative relations between the Australian Government and Indigenous peoples. A human rights framework, as envisaged by the Declaration, will serve as an invaluable guide to the development of appropriately adapted policies for

Indigenous communities. Importantly, it will promote the participation and engagement of Indigenous peoples in the political process and in matters which directly affect them.

Australia must join the consensus of the international community

As one of only four countries who initially opposed the Declaration, removing its opposition to the Declaration would enable Australia to join the consensus of the rest of the international community on the fundamental freedoms and human rights of Indigenous peoples. Indeed, in recent weeks, a majority of the Canadian House of Commons adopted a motion in support of the Declaration, thereby leaving Australia, the United States and New Zealand as the only countries to remain opposed to the Declaration.

Australia's opposition to the Declaration is based on myths and misperceptions

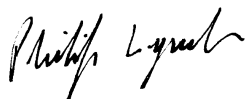
The HRLRC and ILC consider that the previous Australian Government's opposition to the Declaration was based on a number of ill-conceived perceptions about the Declaration. This view is shared by the Human Rights and Equal Opportunity Commission, which considers that the previous Australian Government's reasoning for opposing the Declaration has no sound base and does not interpret the Declaration consistently with international law (see, for example, HREOC's *Social Justice Report 2006*).

The idea that the Declaration would give Indigenous Australians veto powers over Parliament, make traditional law superior to national law and create the potential for Indigenous compensation claims over land is misconceived. The Declaration does no such thing. Rather, it is a non-binding human rights instrument of the General Assembly, which means that it has no formal legal status in the Australian legal system and cannot elevate Aboriginal customary law or any other Indigenous right over domestic law. The Declaration recognises the human dignity of Indigenous people, while respecting the integrity of sovereign states.

The Declaration is aspirational because it elaborates upon standards that states and their public institutions should aspire to and respect and achieve in their relationships with Indigenous communities and organisations. It is an instrument of dialogue and creates no new rights in international law; rather, it establishes a framework of those human rights that already exist in international law as they apply to Indigenous peoples.

The HRLRC and ILC, together with the list of organisations contained in the attached schedule, strongly recommend that the Australian Government endorse the Declaration as a matter of priority.

Yours sincerely



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Schedule

This letter has been endorsed by the following organisations:

Aboriginal and Islander Independent Community School, Acacia Ridge Brisbane
 Aboriginal Justice Support Group
 Aboriginal Legal Rights Movement
 Aboriginal Rights Coalition
 Aboriginal Support Group – Manly Warringah Pittwater
 Australian Anthropological Society
 Australian Bahá'í Community
 Australian Federation of Disability Organisations
 Australian Institute for Holocaust & Genocide Studies
 Australian Lawyers for Human Rights
 Australian Student Environment Network
 Australians for Native Title and Reconciliation (NSW) Inc
 Australians for Native Title and Reconciliation (South Australia) Inc
 Australians for Native Title and Reconciliation (Victoria) Inc
 Australians for Native Title and Reconciliation Inc
 Baglady Productions
 Blue Mountains People for Reconciliation
 Brain Injury Australia
 Canterbury-Bankstown Peace Group
 Castan Centre for Human Rights Law
 Catholics for Australian Reconciliation
 Central Queensland Aboriginal & Islander Child Care Agency Inc
 Centre for International and Public Law, Australia National University
 Centre for International Governance and Justice, Australia National University
 Centre for Indigenous Cultural Policy Founding Directors Limited
 Centre of Excellence for Repatriating Human Remains and Safe Keeping of Queensland
 Aboriginal and Torres Strait Islander Material Culture
 Christians for an Ethical Society
 Combined Community Legal Centres Group (NSW) Inc
 Darwin Aboriginal Rights Coalition
 Deaf Australia Inc
 Deaths in Custody Watch Committee

Disability Discrimination Legal Centre (NSW)
 Disability Discrimination Legal Service (Vic)
 Ethnic Child Care Family and Community Services Co-op Ltd
 Federation of Community Legal Centres (Vic) Inc
 Federation of Ethnic Communities' Councils of Australia
 GetUp
 Gilbert + Tobin Centre of Public Law
 Global Trade Watch
 Ian Thorpe's Fountain for Youth
 Independent Advocacy SA Inc
 Indigenous Concern Committee (of the Religious Society of Friends, Quakers)
 Indigenous Education Leadership Institute, Queensland University of Technology
 Indigenous Law Students & Lawyers Association of Victoria – Tarwirri
 International Women's Development Agency Inc
 JobWatch
 Justice for Palestine Matters
 Kingsford Legal Centre
 Kokatha National Elders Council, Port Augusta and Coober Pedy, South Australia
 Lane Cove Residents for Reconciliation
 Lower Murray Nungas Club Inc
 Marist Brothers Sydney Province
 Micah Projects Inc
 Missionary Sisters of Service
 Mooka Bula Indigenous Association Incorporated
 Mosman Reconciliation
 National Association of Community Legal Centres
 National Association of People Living With HIV/AIDS
 National Indigenous Television
 National Indigenous Times
 National Union of Students Inc
 New South Wales Council for Civil Liberties
 North Australian Aboriginal Justice Agency
 Northern Sydney Region Reconciliation Network
 NSW Ecumenical Council
 Oodgeroo Unit (ATSI Unit), Queensland University of Technology
 Owners of BlackFella's Dreaming Keeping Place
 Oxfam Australia

People With Disabilities (WA) Inc
 PILCH (Vic)
 Positive Aboriginal and Torres Strait Islander Network
 Presentation Sisters Victoria
 Presentation Sisters Wagga
 Presentation Sisters, Queensland Kalparrin Community Incorporated
 Professor Jon Altman, The Australian National University, Canberra
 Public Interest Advocacy Centre
 Reconciliation Australia
 Sisters of Charity of Australia
 Sisters of St Joseph SA Province Reconciliation Circle
 Social Action Office
 St Mary's Catholic Community
 St Vincent de Paul Society National Council
 Swan Valley Nyungah Community
 Tangglun Piltengi Yunti Aboriginal Corporation
 Top End Aboriginal Conservation Alliance
 UN Association of Australia
 UN Association of Australia (NT Branch)
 UnitingJustice Australia
 University of Melbourne Human Rights Forum
 Victorian Aboriginal Child Care Agency
 Victorian Aboriginal Community Controlled Health Organisation
 Victorian Aboriginal Legal Service
 West Australians for Racial Equality.
 Women With Disabilities Australia Inc
 Women's Reconciliation Network, NSW
 Women's Rights Action Network Australia
 Worimi Traditional Elders
 Working Group for Aboriginal Rights
 World Archaeological Congress
 Yaitya Purrana Indigenous Health Unit, Faculty of Health Sciences, University of Adelaide
 Yakkahire
 Youthlaw
 21st Century Dreamtime