



Aboriginal and Torres Strait Islander peoples

This information sheet talks about some of the human rights issues faced by Aboriginal and Torres Strait Islander peoples (or Indigenous peoples). It also highlights how a federal Human Rights Act could help deal with these issues.

Which human rights are we talking about?

Human rights are about everyone, and they are very important for Indigenous peoples. We are all entitled to the enjoyment of human rights without discrimination of any kind, including on the basis of race.

The human rights and freedoms particularly relevant to Indigenous peoples include the right to:

- an adequate standard of living, including adequate food, clothing and housing
- the highest attainable standard of physical and mental health
- be free and safe from violence
- self-determination (which can include a guarantee of full, free and effective participation in all aspects of public life, particularly government decision-making)
- recognition and protection of traditional lands, territories and resources
- enjoyment of culture and use and preservation of languages, and to not be subjected to forced assimilation or destruction of culture
- be treated equally under the law.

On 13 September 2007, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples (Declaration)*. The *Declaration* affirms the ‘minimum standards for the survival, dignity and well-being’ of Indigenous peoples. While it is anticipated that the government will make a formal statement of support for the *Declaration*, it is an active international instrument that must be applied consistently with Australia’s human rights obligations.

What are some of the human rights problems faced by Indigenous peoples?

On a daily basis, Indigenous peoples live with the consequences of Australia’s failure to protect their basic human rights, and continue to experience racial discrimination in many spheres of life.

There are clear differences between the experiences of Indigenous and non-Indigenous people in Australia across all indicators of quality of life. Indigenous people generally experience lower standards of health, education, employment and housing. They are over-represented in the criminal justice system and the care and protection systems nationally compared to non-Indigenous people. For example:

- The life expectancy of Indigenous people is around 17 years lower than that of the Australian population.
 - In 2006, the unemployment rate for Indigenous people was 16% compared with only 5% for the non-Indigenous population.
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- In 2004–2005, 27% of Indigenous people were living in overcrowded conditions.
- Indigenous people are more likely to experience homelessness than other Australians. In 2006, the rate of homelessness for Indigenous people was three times the rate of other Australians.
- Indigenous people are more likely to experience family violence than non-Indigenous people. While it is difficult to estimate the incidence of violence in Indigenous communities, in 2005 it was reported that 18.3% of Indigenous women experienced physical or threatened abuse in the past 12 months, compared with 7% of non-Indigenous women.
- Indigenous prisoners represented 24% of the total prison population in Australia in 2007.

Indigenous peoples have also suffered from the limited recognition and protection of their cultures, languages and rights and ownership of land and resources.

False accusations because we are blackfellas

‘My brother and I were in a store and we were looking at a lap top computer. Now me and my brother happen to be dark ones. And there in the store there are school kids walking around the store with bags over their shoulders and everything. I happened to have my brief case with me and this manager of the store said over the PA system: “You two blackfellas looking at the lap top, please move back to the front store where we can remove your bag.” I just left the store mate and never been back.’

“Get a life cobber!” from Australian Human Rights Commission, *Voices of Australia* (2005) p 49.

What are the limitations of existing human rights protections for Indigenous peoples?

Indigenous people generally experience lower standards of health, education, employment and housing. **They are over-represented in the criminal justice system and the care and protection systems nationally compared to non-Indigenous people.**

If you feel you have been discriminated against or vilified because of your race, you can make a complaint to the Australian Human Rights Commission under the federal *Racial Discrimination Act 1975* (Cth) (RDA). This might involve a complaint of discrimination in employment; education; accessing land, housing or accommodation; accessing goods and services; accessing public places and facilities; advertising or trade union membership. Or, you could make a complaint under state or territory anti-discrimination laws.

Despite this, there are limited human rights protections for Indigenous peoples at the moment. This impacts in two ways: a lack of protection of key human rights; and vulnerable protection for human rights that are currently protected.

There are limited protections in place for the economic, social and cultural rights of Indigenous peoples. Governments should consult and ensure the effective participation of Indigenous peoples in decision-making that affects them. This absence of protection has contributed to slow progress in addressing the disadvantage experienced by Indigenous peoples, and results in policy made without Indigenous input – often resulting in efforts being poorly targeted and sometimes discriminatory.

One of the most glaring limitations of human rights protections in Australia is that the Australian system of government does not prevent the federal government from making laws that discriminate against Indigenous peoples on the basis of race. Recent examples include the federal government's 1998 amendments to the Native Title Act and the enactment of the 2007 Northern Territory Emergency Response legislation (which has suspended the application of racial discrimination laws outlined above). The situations which led to these laws being created could have been addressed without resorting to racial discrimination.

Northern Territory intervention

To uphold human rights, governments are required to take measures to protect children from sexual abuse and family violence. This can be achieved without discrimination and without infringing other human rights. The federal Northern Territory Emergency Response legislation introduced measures to address child sexual abuse and family violence in 73 prescribed Indigenous communities in the Northern Territory in 2007. However, the Australian Human Rights Commission is concerned that these measures are discriminatory and do not protect human rights. The following measures are of concern:

- the suspension of the application of the *Racial Discrimination Act 1975* (Cth). This allows officials to act in a racially discriminatory way
- income management measures to control how a person spends their money. This significantly interferes with the way a person manages their life and with their right to privacy
- the retrospective application of parts of social security legislation
- the exclusion of some aspects of social security administrative decisions from review.

How could we improve human rights protections for Indigenous Australians?

The Australian Human Rights Commission supports a Human Rights Act for Australia.

A Human Rights Act could help prevent human rights breaches from happening and provide remedies for those breaches that were not prevented. A Human Rights Act could make a difference in protecting and promoting the rights of all people in Australia by requiring our government to carefully consider how decisions impact on human rights.

A Human Rights Act could:

- make the **federal Parliament consider how laws impact on human rights** – for example, parliament would have to publicly justify any decision to adopt a law that discriminated against Indigenous peoples
- make the **federal government respect human rights when developing policy** – for example, the government may be required to respect the right of Indigenous peoples to participate in decision-making in matters that affect their rights

A Human Rights Act that included the rights to adequate housing, health, education and social security could make a difference to the lives of Indigenous people in Australia. **It would improve the policies, procedures and services that many Indigenous people encounter daily.**

- make **public servants respect human rights when making decisions and delivering services** – for example, the distinct and diverse cultures, needs and aspirations of Indigenous peoples would need to be considered in the design and delivery of health and housing services
- provide a **range of enforceable remedies** if a government department breached human rights.

Due to the depth of disadvantage in Indigenous communities, a Human Rights Act that included the rights to adequate housing, health, education and social security could make a difference to the lives of Indigenous people in Australia. It would improve the policies, procedures and services that many Indigenous people encounter daily.

Although Indigenous peoples would benefit from the protection of a range of general rights, human rights protections for Indigenous people would be especially enhanced if a Human Rights Act:

- recognised Indigenous peoples in the preamble
- recognised the right of Indigenous peoples to effective participation in decision-making in matters that affect their rights
- recognised specific rights of Indigenous peoples to their lands, languages, culture and traditional knowledge, among other inherent rights.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

In addition to a Human Rights Act there is a range of ways in which the human rights of Indigenous peoples could be better promoted and protected in Australia. For example:

- amending the Australian Constitution to recognise Indigenous peoples in the preamble and to require that all laws do not discriminate on the basis of race
- endorsing and implementing the *United Nations Declaration on the Rights of Indigenous Peoples*
- establishing a National Indigenous Representative Body
- engaging in consultations on the future establishment of a Social Justice package or framework agreement process
- adopting national plans to address racial discrimination and vilification
- developing a national public education program about human rights, with a focus on the human rights of Indigenous peoples.

These and other measures could make a positive difference to human rights protection for Indigenous people.

Where can I find more information about the human rights of Indigenous peoples?

Australian Human Rights Commission:
www.humanrights.gov.au/social_justice/index.html