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The Hon Stephen Smith MP

Minister for Foreign Affairs
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

12 May 2008

Dear Minister for Foreign Affairs

Australian Lawyers for Human Rights (ALHR) and the Sydney Centre for International Law at the University of Sydney strongly encourage the Australian Government to promptly endorse the United Nations General Assembly's 2007 Declaration on the Rights of Indigenous Peoples (the Declaration).

Australia's support for the Declaration would be a positive statement to the world that Australia values and respects the rights of indigenous peoples. For many years, Australia has supported minority rights within the *International Covenant on Civil and Political Rights*, and the development of more specific standards to meet the needs of indigenous peoples is a logical progression of our existing bipartisan policy.

Australia has long supported the creation and implementation of human rights regimes particularised to meet the needs of women and children, to combat torture and racial discrimination, and, most recently, to ensure disability rights.¹ Specialised human rights standards are designed simply to address the special needs and vulnerabilities of particular groups, without detracting from the human rights enjoyed by all Australians. While affirming the rights of indigenous Australians, the Declaration does not, therefore, privilege or prioritise those rights over the rights of other Australians.

Supporting the Declaration would enable Australia to demonstrate its moral leadership on human rights, which could help to amplify Australia's voice on human rights concerns overseas and strengthen Australia's foreign policy goal of improving human rights worldwide. In our experience as international and human rights lawyers, many countries have historically looked to Australia as a standard setter on human rights issues. Recent failures by Australia to show moral leadership have served as signals to other countries to undermine the global human rights system and its protection of human dignity. Expressing Australia's support for this Declaration represents an important opportunity to reclaim that traditional leadership role.

Both of our organisations had members attending the 2020 Summit. One of the priority themes from "Australia's future security and prosperity in a rapidly changing region and world" was the recommendation that Australia "Assert new leadership in global governance", including by "Reaffirm[ing] our commitment to working in international institutions and to the international rule of

¹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC); Convention on the Elimination of all forms of Racial Discrimination (CERD); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of Persons with Disabilities (CRPD).

law”. Concrete steps for achieving those aspirations were agreed to include expressing Australia’s support for the Declaration (along with key new human rights treaties and initiatives).

The Declaration is a non-binding resolution of the UN General Assembly which does not impose legal obligations upon Australia. It does, however, reflect the culmination of many decades of consensus-building on indigenous rights within the UN. As such, it reflects world’s best practice standards on respect for indigenous peoples, including its recognition of historical and contemporary injustices such as dispossession and alienation of traditional lands.

The Declaration can provide useful guidance to Australia in building on our many existing progressive domestic policies on indigenous peoples, including through the recent stimulus of the Australian Government’s Apology to the stolen generations. For example, the Declaration complements current Government policy aimed at ‘closing the gap’ between indigenous and non-indigenous mortality rates and general health.

It can provide a yardstick against which to measure and improve policy processes and outcomes, and should thus be seen as a way of enhancing Australian policy-making through a productive dialogue between international standards and national practices. It should *not* be seen as interfering in Australian sovereignty or our legal system. Rather, the Declaration recognises a range of important minimum standards concerning indigenous peoples, including relating to their cultural practices and heritage; spiritual beliefs and practices; political, legal, economic and social structures; traditional lands and resources; development and labour rights; and political participation and autonomy.

We would be pleased to provide you with further advice or to meet in Sydney or Canberra to discuss the Declaration with you. We also look forward to discussing this further at the upcoming DFAT and A-G NGO Human Rights Dialogues.

Yours sincerely

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President, ALHR

Dr Ben Saul
Director, Sydney Centre

About Australian Lawyers for Human Rights (ALHR)

Australian Lawyers for Human Rights Inc (ALHR) was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323). ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1,300 people, with active National, State and Territory committees. ALHR is a member of the Australian Forum of Human Rights Organisations, the Commonwealth Attorney General’s NGO Forum on Human Rights, and the Department for Foreign Affairs Human Rights NGO Consultations. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. To help lawyers use human rights remedies in their daily legal work, ALHR runs seminars on the use of international human rights standards in daily legal practice, in areas such as family law, tenancy, anti-discrimination, crime, corporations, land and environment, and employment. We have recently commissioned a training package that we hope to roll out to articled clerks and APS graduate intakes.

About the Sydney Centre for International Law (www.law.usyd.edu.au/scil)

The Sydney Centre for International Law is a leading centre of international law research, policy, teaching, advice and practice in the Asia-Pacific region. The Sydney Centre operates within the University of Sydney’s Faculty of Law and builds upon the Faculty’s well-recognised history of research, scholarship and teaching in international law, which has included globally recognised professors such as Ivan Shearer, James Crawford, and Sir Julius Stone. The Sydney Centre has expertise in all areas of public international law, including human rights law, criminal law, humanitarian law, refugee law and migration law, economic law (trade, investment, intellectual property), commercial arbitration, dispute settlement, the law on the use of force, the law of the sea, and environmental law.