



Free, Prior and Informed Consent

What is Free, Prior and Informed Consent (FPIC)?

FPIC is a right held by First Nations people. FPIC is a key part of First Nations self-determination and the collective right of First Nations people to participate in and make decisions about issues that impact them. There is no single definition of what FPIC means, but there are some guiding principles that are generally accepted:



Free: consent is given voluntarily without coercion, intimidation, or manipulation. The process is directed by the First Nations community without expectations or timelines set by others.



Prior: enough time is provided for the community to consider the issues before they make a decision.



Informed: relevant and accessible information is provided before seeking consent.



Consent: consent is given by the right people and reached through customary or agreed decision-making processes of the community.

You can read more about these principles here:

- [Free, Prior and Informed Consent – ANTAR](#)
- [Free, Prior and Informed Consent \(FPIC\) | Indigenous Peoples – Food & Agriculture Organization of the UN](#)

FPIC is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**). UNDRIP is the most comprehensive statement on the rights of Indigenous People worldwide. It was made by the United Nations General Assembly on 13 September 2007. The importance of FPIC is increasingly being recognised globally.

FPIC is referred to throughout UNDRIP including in relation to legislative and administrative measures, and development proposals that affect First Nations people and Country.

FPIC in Australian law

Australia formally supported (“endorsed”) UNDRIP in 2009. UNDRIP is a declaration, not a treaty. This means that it is not yet legally binding under international law.

There is no standalone law that incorporates the right to FPIC in Australian law. However, some consultation requirements under State/Territory and Federal laws incorporate elements of FPIC including in relation to Cultural Heritage, native title, land rights and environmental approvals.

The Federal Department of Climate Change, Energy, the Environment & Water (**DCCEEW**) has published internal **Guidelines** about FPIC for its staff.

The Federal Government is currently developing a First Nations Engagement Standard to apply to federal environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

The **Dhawura Ngilan** Best Practice Standards for Cultural Heritage Laws highlight that FPIC of Aboriginal and Torres Strait Islander people should be required before the approval of any project that affects their Country and their cultural heritage.

You can read more about the EPBC Act Engagement Standards [here](#).

DCCEEW has published **Interim Guidance** on engagement with First Nation peoples and communities on approvals under the EPBC Act.



FPIC in law and policy reform processes

It is open to governments to create consultation processes that comply with FPIC. While there is nothing “legally” requiring them to do so right now, Australia’s endorsement of UNDRIP places a strong and persuasive obligation on governments to comply with it.

FPIC in development proposals

FPIC is relevant to development proposals where First Nations people often have limited consultation and decision-making rights. Some development approval processes include elements of FPIC, but most fall short of international best practice.

How can First Nations leverage and assert the right to FPIC?

Many First Nations groups across Australia assert their right to FPIC in their interactions with government and developers. Below are some practical ideas for asserting the right to FPIC in relation to issues and projects that impact your Country:

- Consistently assert your expectation that **governments** will comply with FPIC in carrying out their consultation processes relating to policy and law reform.
- Consistently assert your expectation that **developers** will comply with FPIC in their project design, approval process and implementation.
- Take a copy of [UNDRIP](#) or the Australian Human Rights Commission’s [UNDRIP Community Guide](#) to your consultation meeting and refer to your community’s UNDRIP rights throughout the consultation process.
- Develop your own FPIC protocol that sets out what FPIC looks like for your group and provide it to the government department or developer that is consulting on the policy, law or project. Seek their assurance that if you participate in the consultation process, they will respect your protocol. For example, as part of your protocol you may have certain requirements about how any Traditional Ecological Knowledge you choose to share is used.
- If you need more information, more time, or additional resources to properly engage with the consultation process, contact the government representative responsible for the consultation and ask for these things. Be clear that these are needed for the process to comply with FPIC.
- If you decide not to engage with a consultation process because you don’t feel comfortable with the way the process was carried out, communicate these reasons to the government department or developer and refer to UNDRIP.

You can call the Environmental Defenders Office on **1800 626 239** for free legal advice.



1800 626 239



first.nations.program@edo.org.au



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