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## Australia's compliance with CERD FACT SHEET 6

### Effective Remedies

Remedies for racial discrimination are limited in Australia, and in relation to some of the most egregious racist policies of the Australian Government remedies are not available.

#### ***Northern Territory Intervention***

The Northern Territory Intervention (**NTI**) is a package of legislation, directly targeted at Aboriginal communities and passed without consultation with Aboriginal peoples, that restricts and removes a range of human rights with the purported aim of improving development outcomes and protecting children from abuse (see separate factsheet [Australia's compliance with CERD: Northern Territory Intervention](#).)<sup>1</sup> The NTI operates so as to infringe and limit the rights of affected Aboriginal people to property, social security, adequate standards of living, health and education, self-determination, work, child rights and remedies. From 2007 until December 2010, the legislation suspends the operation of the *Racial Discrimination Act 1975* (Cth) (**RDA**), and state and territory anti-discrimination legislation, for the purposes of the NTI.

The legislation operates to exclude affected individuals from challenging the intervention measures or seeking remedies for the harm they have suffered as a result of these measures. Whilst the government has passed legislation to reinstate the RDA in December 2010, it will not be done in a manner which ensures the rights of affected persons to challenge or seek adequate remedies.

#### ***Stolen Generations***

Between 1910 and 1970, at least 100,000 Aboriginal children (approximately 10-30% of Aboriginal children during that period) were forcibly removed from their families by various government agencies and church missions. This practice has had a destructive effect on Aboriginal culture, denied Aboriginal peoples their fundamental rights, had a profoundly detrimental effect on Aboriginal children<sup>2</sup> and amounted to genocide.<sup>3</sup>

In 2008, the Australian Government formally apologised to the Stolen Generations but to date, only one person in Australia has received compensation for their removal from their parents, and only after taking protracted private legal proceedings. The Senate Standing Committee on Legal and Constitutional Affairs rejected the proposed Stolen Generation Compensation Bill in 2008 and instead, recommended the establishment of a 'National Indigenous Healing Fund'.<sup>4</sup> Despite subsequently receiving a funding commitment from the Australian Government of \$29.5 million for initiatives to assist Stolen Generations survivors,<sup>5</sup> the fund does not compensate individual members of the Stolen Generations in recognition of wrongs committed against those individuals by governments.

#### ***Stolen Wages***

Aboriginal peoples have suffered stolen wages in every Australian jurisdiction.<sup>6</sup> 'Stolen wages' are the wages of Aboriginal peoples whose paid labour was controlled by the Government during the nineteenth and twentieth centuries. In many cases, Aboriginal peoples did not receive any wages at all or received insufficient wages. No coordinated response to Aboriginal peoples' stolen wages has been initiated by the Australian Government and there is no scheme or process currently in operation anywhere in Australia that

requires State or Territory governments to account for the monies held by them on behalf of Aboriginal peoples. Instead, the schemes depend on the claimant initiating contact with the authorities to register a claim and then provide additional evidence on the quantum and legitimacy of their claim.<sup>7</sup>

### **Compensation for Extinguishment of Native Title**

Government policy and legislation has a stated commitment to deliver compensation for extinguishment of Indigenous title after 1975. No litigation has yet led to this outcome. The Indigenous Land Corporation is not providing adequate remedy through restitution of lands where native title is deemed 'extinguished' before 1975. Information on the ILC acquisition of lands is difficult to determine. Confidential negotiated agreements may address compensation, but the agreements are not subject to scrutiny or evaluation. The Constitution requires "just terms" compensation for compulsory acquisition of title (section 51).

### **Remedies for Racial Discrimination**

The AHRC can only provide limited remedies for racial discrimination, such as conciliating complaints or making non-binding recommendations to the Australian Government. In 2008-09, the number of complaints received by the AHRC under the RDA was more than double the number received in 2004-05. Despite the dramatic increase in complaints, the AHRC funding decreases have resulted in budget reductions by 14.5% across AHRC business units.<sup>8</sup> If a complaint to the AHRC fails, the complainant may go to court, where it is very difficult to establish race discrimination in court, as the complainant bears the entire burden of proving discrimination. Complainants who pursue unlawful discrimination claims in the courts are also exposed to adverse costs orders if they are unsuccessful.<sup>9</sup>

### **TABLE OF CROSS-REFERENCES**

<b>Issue</b>	<b>CERD Articles</b>	<b>References to Issue in CERD NGO Report</b>
Northern Territory Intervention	1, 2 and 6	CERD Report Part B.1 and Part I.1(a)
Stolen Generations	6	CERD Report Part I.1(b)
Stolen Wages of Aboriginal peoples	5(e) and 6	CERD Report Part G.1(h) and Part I.1(c)
Extinguishment of Native Title	5(b)-(d) and 6	CERD Report Part F.1(f) and Part I.1(d)
Australian Human Rights Commission	1, 2 and 6	CERD Report Part A.1, Part A.3 and Part I.2

### **Endnotes**

<sup>1</sup> *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Service and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

<sup>2</sup> Western Australian Aboriginal Child Health Survey, *Forced Separation from Natural Family and Social and Emotional Wellbeing of Aboriginal Children and Young People* (2005) page 52.

<sup>3</sup> AHRC, *Bringing them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).

<sup>4</sup> Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Stolen Generation Compensation Bill 2008* (2008) page ix.

<sup>5</sup> Anaya, *Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), para [18].

<sup>6</sup> Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Unfinished Business: Indigenous Stolen Wages* (2006) ch 1.

<sup>7</sup> Public Interest Advocacy Centre, *Stolen Wages in NSW* (2009).

<sup>8</sup> AHRC, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in Eliminating Discrimination and Promoting Gender Equality* (1 September 2008) page 217.

<sup>9</sup> Elizabeth Evatt, 'Meeting Universal Human Rights Standards: The Australian Experience' (Speech delivered at Department of the Senate Occasional Lecture Series, Parliament House, Canberra, 22 May 1998) at page 7.