

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 1

Constitutional and legislative framework

Incorporation of treaty obligations into domestic law

Suggested Question

How does Australia ensure compliance with its international human rights treaty obligations without comprehensive constitutional or legislative protection of human rights?

Background

There is no overarching and comprehensive protection of human rights in Australian law, such as a bill of rights enshrined in the Australian Constitution or by legislation. In 2009, an independent review commissioned by the Australian Government found that Australia's legal and institutional protection of human rights is inadequate, particularly for individuals and communities that are marginalised or disadvantaged.¹ Despite widespread public support for the introduction of a Human Rights Act,² the Australian Government has said it will not consider the issue of comprehensive legal rights protection until at least 2014.

While Australia's domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they provide only patchwork protection. Most rights contained in the *ICCPR* and *ICESCR* are not justiciable or enforceable in Australian courts or tribunals. Where some protection exists, such as the *Racial Discrimination Act 1975* which partly implements the Convention on the Elimination of Racial Discrimination, the protections are merely Acts of Parliament and can be overridden by subsequent law. Indeed, the Australian Government can, and has, enacted laws which

¹ A copy of the National Human Rights Consultation Committee's report on the protection and promotion of human rights in Australia is available at <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>.

² The national human rights consultation received over 28,000 public submissions in support of a Human Rights Act.

override or suspend aspects of existing rights protections, and which pose a significant challenge to its compliance with international human rights law.³

Proposed Recommendation

That Australia fully incorporate its international human rights obligations into domestic law (with the aim of eventual Constitutional entrenchment) by introducing a comprehensive, judicially enforceable Human Rights Act.

Role of the Australian Human Rights Commission

Suggested Question

What steps has Australia taken to address the need for an expansion in the function and powers of the Australian Human Rights Commission so that it meets the standards for proper performance under the Paris Principles?

Background

Although Australia does have an independent national human rights institution in accord with the Paris Principles, the authority of the Australian Human Rights Commission is limited to inquiry and complaints. The Commission cannot make enforceable determinations and there is no requirement that the Australian Government implement or even respond to its recommendations. There is also insufficient funding for the Commission to properly conduct its functions and activities.

Proposed Recommendation

That Australia ensure that the determinations and recommendations of the Australian Human Rights Commission are given greater weight and that the Commission is sufficiently funded to independently and effectively fulfil its mandate.

³ See UPR Fact Sheet 7 on Aboriginal and Torres Strait Islander peoples.

Implementation of recommendations of UN human rights mechanisms

Suggested Question

What institutional structures does Australia have in place to systematically implement and follow up on views and recommendations made by UN treaty bodies, special procedures and other UN human rights mechanisms?

Background

Australia lacks any institutional mechanism for the systematic domestic consideration and implementation of views and recommendations made by UN human rights mechanisms. Australia has a poor record of taking action in response to treaty body recommendations, which it does not recognise as legally authoritative, and has rejected the adverse findings and recommendations of the UN Human Rights Committee on a significant number of occasions.⁴

Proposed Recommendation

That Australia extend the mandate of the proposed Joint Parliamentary Committee on Human Rights to include the consideration, follow up and oversight of implementation of recommendations and views of UN human rights mechanisms.

⁴ The views of the Human Rights Committee and the Australian Government's response can be found at http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationCommunications.