

Equality and non-discrimination laws

Consolidation of equality laws

Suggested Question

Will the Australian Government's proposed consolidation of anti-discrimination laws enshrine the right to equality as contained in international human rights law?

Background

Australia has enacted a number of laws to prevent discrimination, including the *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth), *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth). Together, these laws provide only piecemeal protection of the right to non-discrimination.

Specifically, Australia's anti-discrimination laws are deficient in that they:

- are reactive and complaints-based;
- fail to actively promote equality or address systemic discrimination;
- do not address all grounds of discrimination or intersectional discrimination;¹ and
- are ineffective in areas that have been granted permanent exemptions.²

The UN Human Rights Committee noted in their 2009 Concluding Observations on Australia that it “remains concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law” and recommends that Australia “adopt Federal legislation, covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-

discrimination”.³ The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination have similarly recommended that Australia strengthen its anti-discrimination laws.⁴

In April 2010, the Australian Government announced a commitment to “harmonise and consolidate Commonwealth antidiscrimination laws”. Australia should use this opportunity to ensure that its equality laws meet the anti-discrimination and equality obligations articulated in its international obligations.

Proposed Recommendation

That Australia enact comprehensive equality legislation that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies against systemic and intersectional discrimination.

Constitutional guarantee of equality

Suggested Question

Does the Australian Government support a Constitutional amendment enshrining the right to equality?

Background

The Australian Constitution does not enshrine the right to equality and non-discrimination. As a result, anti-discrimination laws may be overridden by subsequent legislation, as is the case with the

¹ Under domestic law, sex, race, age and disability are all protected attribute. This is a narrower set of grounds that under international human rights treaties and does not include, for example, protection against discrimination on the grounds of sexual orientation, gender identity, religion or social status.

² For example, under the *Sex Discrimination Act 1984* (Cth), sporting clubs, religious bodies and charities are permanently exempt from the operation of the Act.

³ Human Rights Committee, *Concluding Observations: Australia*, CCPR/C/AUS/CO/5, 2 April 2009 [12].

⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia*, E/C.12/AUS/CO/4, 12 June 2009 [14]; Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Australia*, CEDAW/C/AUS/CO/7, 30 July 2010 [25]; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia*, CERD/C/AUS/CO/15-17, 27 August 2010 [10].

Northern Territory Intervention laws (see Fact Sheet 7 on Aboriginal and Torres Strait Islander peoples).

Proposed Recommendation

That Australia's proposed Equality Act include a provision mandating that an inquiry be held into a constitutional amendment aimed at enshrining the right to equality.