



Factsheet: Scope of international obligations

Background Information

Australia is a party to 7 main human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of Discrimination Against Women (CEDAW); Convention on the Rights of the Child (CRC); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and Convention on the Rights of Persons with Disabilities (CRPD).

Australia has ratified or acceded to the 2nd Optional Protocol to the ICCPR; the Optional Protocol to the CEDAW and CRPD; the Optional Protocol to the CRC on the involvement of children in armed conflict; the Optional Protocol to the CRC on the sale of children child prostitution and child pornography.

Key Issue – Ratification of OPCAT

Australia has **signed but not ratified** the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), nor has it established a National Preventive Mechanism.

Ratification of the OPCAT would allow the United Nations Subcommittee on the Prevention of Torture (SPT) to regularly access places of detention in Australia, and make recommendations to Australia on strengthening prevention of torture and other cruel, inhuman or degrading treatment. Ratification will further commit Australia to establishing, maintaining or designating a National Preventive Mechanism.

Australia does not currently have a comprehensive and nationally consistent framework to monitor places of detention. Ratifying the OPCAT is a means of addressing concerns of mistreatment in immigration detention and prisons, in particular against young people and Aboriginal and Torres Strait Islander peoples.

There has now been a significant delay of more than six years since Australia's signature of the OPCAT. No legislation to implement OPCAT has been introduced at a federal level. Legislation introduced to state and territory parliaments has not been passed. The Attorney General has represented that the current federal government is yet to take a formal position on the OPCAT.¹

Recommendation

That the Government expedite the ratification of OPCAT and establishment of a National Preventive Mechanism for places of detention.

Key Issue – Ratification of other Conventions and Optional protocols

Australia is yet to ratify International Labour Organisation Convention 169 on Indigenous and Tribal Peoples (ILO Convention 169). Following the last UPR, Australia committed to formally consider ratifying ILO Convention 169, however limited consideration has been given to this.

Following the last UPR Australia indicated that it does not intend to become a party to the ICRMW. The current Australian Government has not developed a formal position on the ICRMW, despite the significance of the issues within our region.

Optional Protocols for communications under the CRC and ICESCR have entered into force since Australia's last UPR. The Australian Government is yet to form a formal position on OPCP.²

It is practice that the Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification before Australia enters into new treaty obligations.

Recommendation

The Commission recommends that the Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of ILO Convention 169, Migrant Workers Convention and Optional Protocols for communications under ICESCR and CRC.

Key Issue – Removal of CEDAW, ICERD and CRC reservations

Australia has entered reservations to CEDAW in relation to the provision of maternity leave with pay and the employment of women in combat or combat-related positions in the defence force. These reservations are no longer necessary, following the introduction of a national paid parental leave scheme on 1 January 2011 and the removal of restrictions on the employment of women in combat roles in the Australian Defence Forces effective from 1 January 2013.

Australia maintains a reservation under article 4 (a) of ICERD, relating to the criminalisation of racial hatred. At the last UPR, Australia agreed to consider withdrawing its reservation under article 4 (a) of ICERD. The Australian Government has not developed a formal position on the withdrawal of the reservation.

Australia maintains a reservation to the obligation under article 37(c) of the CRC to separate children from adults in prison. The UN Committee on the Rights of the Child has commented that this reservation is unnecessary, as 'there appears to be no contradiction between the logic behind it and the provisions of article 37 (c) of the Convention'.³

Recommendation

The Commission recommends that Government confirm a timetable for the withdrawal of reservations to ICERD, CEDAW and CRC.

¹ Australian Human Rights Commission, *Children's Rights Report 2014* (2014), p 25.

² Australian Human Rights Commission, *Children's Rights Report 2014*, p 25.

³ Committee on the Rights of the Child, Concluding observations: Australia, UN Doc CRC/C/AUS/CO/4 (2012), para 9. At http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf (viewed 15 May 2015).