



Factsheet: National framework

Background information

Australia has limited legislative protection of human rights and fundamental freedoms at the federal level. Many of Australia's human rights obligations are not directly incorporated into Australian law.

Australia released a National Human Rights Action Plan (NHRAP) in 2012. The NHRAP includes specific Government actions to improve human rights and addresses the recommendations accepted during the last UPR.¹

Many of the actions committed to within the NHRAP have not occurred. A progress report on the implementation of the NHRAP to coincide with the second UPR together with a review of the 2011 Human Rights Framework have not been completed.

The Parliamentary Joint Committee on Human Rights (PJCHR), established in 2011, assesses whether legislation is consistent with Australia's human rights obligations. All federal legislation is required to be accompanied by a 'Statement of Compatibility with Human Rights' (SOC). The PJCHR raises concerns when they believe that legislation places an unjustifiable limitation on human rights, however legislators are under no obligation to amend bills to reflect these concerns.²

Since the last UPR, Australia has established a full-time Race Discrimination Commissioner, an Age Discrimination Commissioner and a National Children's Commissioner. The National Children's Commissioner is required to report annually to Parliament on the status of enjoyment of human rights by children. Australia also appointed a Human Rights Commissioner focused on the protection of fundamental freedoms as well as the rights of lesbian, gay, bisexual, trans, gender diverse and intersex people. Currently, there is no Commissioner solely dedicated to disability discrimination.³

Key issue

The lack of a bill of rights or a federal Human Rights Act means that many human rights protections are implied through common law. This framework requires self-restraint from legislators to not override these protections. In recent years, migration and counter-terrorism legislation that conflict with human rights principles have been passed by Parliament.⁴

Recommendation

Australia's human rights obligations be directly incorporated into Australian law

¹ Australian Government, *National Action Plan on Human Rights*. At <http://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlan/National%20Human%20Rights%20Plan.pdf> (viewed 22 June 2015).

² *The Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). See further Parliament of Australia, *Parliamentary Joint Committee on Human Rights*, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights (viewed 22 June 2015).

³ *Sex and Age Discrimination Legislation Amendment Act 2011* (Cth). See Australian Human Rights Commission, 'Passage of sex and age discrimination legislation amendment a great day', (Media Release, 25 May 2011). At <https://www.humanrights.gov.au/news/media-releases/2011-media-release-passage-sex-and-age-discrimination-legislation-amendment> (viewed 22 June 2015). *Commission Amendment (National Children's Commissioner) Act 2012* (Cth). See Australian Human Rights Commission, 'Commission welcomes inaugural Children's Commissioner', (Media Release, 25 February 2013). At <https://www.humanrights.gov.au/news/media-releases/commission-welcomes-inaugural-children-s-commissioner> (viewed 22 June 2015). Australian Human Rights Commission, 'Race Discrimination Commissioner appointed', (Media Release, 3 August 2011). At <https://www.humanrights.gov.au/news/stories/2011-news-race-discrimination-commissioner-appointed> (viewed 22 June 2015); Australian Human Rights Commission, 'Commission welcomes new Commissioner', (Media Release, 18 December 2013). At <https://www.humanrights.gov.au/news/media-releases/commission-welcomes-new-commissioner> (viewed 22 June 2015).

⁴ *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth); *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015* (Cth); *National Security Legislation Amendment Act (No. 1) 2014* (Cth); *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth); *Counter-Terrorism Legislation Amendment Act (No. 1) 2014* (Cth).