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Australia's compliance with CERD FACT SHEET 1

Domestic Framework for Implementing the Convention

Lack of Constitutional and Effective Legislative Protection

Australia does not have constitutional nor comprehensive legislative protection of human rights.

The *Racial Discrimination Act 1975 (Cth) (RDA)*, together with similar state and territory legislation, provides protection against racial discrimination in Australia. However, the RDA is an act of Federal Parliament, able to be overridden by subsequent legislation, and it does not address religious discrimination, racial vilification, substantive equality and systemic discrimination. 'Special measures' under the RDA do not comply with the CERD Committee General Recommendation No 32, including the requirement that affected groups be consulted.¹ As such, Australian governments can and have enacted racially discriminatory laws as 'special measures', such as the Northern Territory Intervention (see separate fact sheet on Northern Territory Intervention).

Regulating Australian Corporations Overseas

Australian law does not regulate the impact of Australian corporate activities abroad, including activities that affect the human rights of Indigenous communities overseas, despite reports of the adverse effects of Australian companies overseas.² While corporations can theoretically be prosecuted under Australian law for involvement in genocide, torture and apartheid,³ no prosecutions have been pursued as yet.

Australian Human Rights Commission

As Australia's National Human Rights Institution, the Australian Human Rights Commission investigates, advises on and provides education about human rights in Australia. However, the AHRC has limited powers and funding. The AHRC cannot initiate its own investigations, cannot make any binding determinations on government, cannot provide enforceable remedies to complainants, and has not had a full-time Race Discrimination Commissioner for over ten years. Recent plans to review the RDA as part of the general equality law review have not come with the guarantee that any amendments will not further weaken the RDA.

Multicultural Policy

Australia's multicultural policy expired in 2006 and the new multicultural advisory body, the Australian Multicultural Advisory Council, is yet to issue a new one. An updated policy is necessary to strengthen the Government's commitment to address ongoing issues of discrimination, barriers of access and inequity in delivery of services.

Durban Review

Australia decided to boycott the 2009 Durban Review Conference. While the Australian Government maintains that Australia's existing human rights policies and structures are sufficient,⁴ the Government has not effectively implemented the Durban Declaration and Programme of Action.

Implementation of CERD Committee Views and Recommendations

Australia lacks institutional mechanisms for the domestic consideration and implementation of CERD Committee recommendations. Australia has a poor record in taking action in response to treaty body recommendations, which it does not recognise as legally authoritative, having rejected the adverse findings and recommendations of the Human Rights Committee six times.⁵ Moreover, in April 2010 the Australian Government indicated that it would ignore an interim measures request from the Human Rights Committee in relation to Sheikh Leghaei.⁶

Australia's Reservations to CERD

The Australian Government has maintained its reservation to Article 4(a) of CERD, despite consistent recommendations from the CERD Committee to withdraw it.⁷ No Australian jurisdiction has specifically criminalised acts of racial hatred and federally there is no express protection against religious vilification.

TABLE OF CROSS-REFERENCES

Issue	Relevant CERD Articles	References to Issue in CERD NGO Report
Lack of Constitutional and Legislative Protection	1, 2	FREDA Submission Part A.1, A.2
Regulating Australian Corporations Overseas	2(1)(d)	FREDA Submission Part A.4
Australian Human Rights Commission	2	FREDA Submission Part A.3
Multicultural Policy	1, 2	FREDA Submission Part A.5
Durban Review	1, 2	FREDA Submission Part A.6
Implementation of CERD Recommendations	14	FREDA Submission Part K.
Australia's Reservations to CERD		FREDA Submission Part D.1

Endnotes

¹ CERD Committee, *General Recommendation No 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination* (August 2009).

² Oxfam Australia has submitted several reports on the effects of Australian mining activity overseas, through its previous Mining Ombudsman program see http://www.oxfam.org.au/resources/pages/search.php?search=mining&order_by=relevance&archive=0&k=&per_page=400 at 20 April 2010.

³ *Criminal Code Act 1995* (Cth) Part 2.5.

⁴ Australian Government, *Combined Fifteenth, Sixteenth and Seventeenth Periodic Reports of the Government of Australia under Article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination* (2010).

⁵ The views of the Human Rights Committee and the Australian Government's responses can be found at http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationCommunications.

⁶ See Sarah Gerathy, 'Deporting Sheikh Would Breach Human Rights', *ABC News* (Sydney), 17 May 2010.

⁷ CERD Committee, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, [14] CERD/C/304/Add.101, (April 2000); CERD Committee, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, [12], CERD/C/AUS/CO/14, (14 April 2005).