

#ausUPR20

AUSTRALIA'S HUMAN RIGHTS SCORE CARD

FACTSHEET

Constitutional, legislative and institutional framework

Background information

In 2015, Australia received recommendations to strengthen its constitutional, legal and institutional protection of human rights, including by recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution, and enacting an Australian Charter of Human Rights. Australia has not implemented either recommendation, and there are concerns around Australia's implementation of the Optional Protocol to the Convention Against Torture (OPCAT).

Australia ratified OPCAT in 2017 and withdrew its reservation to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in respect of women in combat roles in 2018. However, concern persists about Australia's failure to ratify other key international human rights instruments, reservations to existing ratifications, and the lack of implementation of previous UPR and UN recommendations.

Human rights treaty protections should be incorporated in domestic law

Despite being a party to seven core human rights treaties, Australia has not fully incorporated these into domestic law, and there is no overarching and comprehensive protection of human rights in Australian law. There are now legislative Charters of Human Rights in two states and one territory, but there is no national Charter of Human Rights and no charters in the remaining four states and one territory.

Recommendation

Australia must introduce a comprehensive, judicially enforceable national Charter of Human Rights and Freedoms that protects the whole community. Similar charters must be introduced in the remaining states and territory that lack a charter.

Recommendation

Within three years, Australia must ratify the:

- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;
- Indigenous and Tribal Peoples Convention (ILO Convention 169);
- International Convention for the Protection of All Persons from Enforced Disappearance;
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP to ICESCR);
- Nagoya Protocol on Access and Benefit Sharing; and
- Third Optional Protocol to the Convention on the Rights of the Child (OP3-CRC).

Within two years, Australia must withdraw all treaty reservations, including to CRC Article 37(c) regarding children in detention. Australia must also

immediately task its Joint Parliamentary Committee on Human Rights with monitoring domestic consideration and implementation of UN human rights recommendations.

Australia's Constitution should support self-determination of Aboriginal and Torres Strait Islander peoples

The Australian Constitution does not support the self-determination, or recognise the rights, of Aboriginal and Torres Strait Islander peoples. The Constitution enables the Australian Parliament to enact discriminatory, race-based legislation.

Recommendation

Australia must hold a referendum to revise the Constitution to recognise the rights of Aboriginal and Torres Strait Islander peoples, remove racist elements and include an anti-discrimination clause.

Recommendation

Australia must establish an Aboriginal and Torres Strait Islander elected representative Voice to Parliament and establish a Makarrata and Truth and Justice Commission to develop a treaty with the First Peoples of Australia.

Recommendation

Australia must incorporate the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law, establish an independent body to oversee its implementation in consultation with Aboriginal and Torres Strait Islander peoples, and include UNDRIP in parliamentary human rights scrutiny standards via the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.

Proper implementation of OPCAT

Australia ratified OPCAT in 2017. However, Australia has shown a lack of commitment to implementing a National Preventive Mechanism (NPM), and there are concerns that this will

result in an NPM lacking the essential powers, resources, independence, and uniformity necessary to fulfil its OPCAT obligations.

Recommendation

To properly implement OPCAT, Australia must:

- **prioritise developing and adequately funding a National Preventive Mechanism that covers aged care and children's and disability specific facilities; and**
- **establish an advisory relationship with civil society, including for designation and implementation stages.**

Victims of atrocity crimes

Despite having the legal framework criminalising serious crimes under international law, Australia lacks an effective institutional mechanism for investigating and prosecuting international crimes committed by Australians and other foreign nationals. This has resulted in failure to advance prosecutions for extraterritorial violations of human rights which amount to serious crimes, leaving victims without justice or redress, and entrenching the impunity of perpetrators.

Recommendation

Australia must develop an international crimes mechanism, including establishing a Specialised Investigations Unit, to provide effective access to justice for victims of serious crimes under international law.

Equality and non-discrimination

Australia protects against discrimination through multiple inconsistent and overly technical anti-discrimination legislation. Australia's piecemeal approach does not provide remedies for intersectional discrimination, and creates significant exceptions and barriers to individuals bringing complaints.

Religious discrimination is not currently addressed by standalone federal discrimination law. In 2019 the federal government released a

draft Religious Discrimination Bill. The proposed Bill goes far beyond protecting against religious discrimination and provides people and faith-based institutions with a licence to discriminate on religious grounds, including when delivering healthcare. The Bill privileges religious views over patient health needs, and removes existing anti-discrimination protections, including for women, people with disabilities, SOGIESC, and people from minority faiths.

Further information and key contacts

The **UPR NGO Coalition Report** is available at <https://www.hrlc.org.au/universal-periodic-review>.

The **key contact** for this factsheet is Hugh de Kretser, Human Rights Law Centre (HRLC), hugh.dekretser@hrlc.org.au.

Recommendation

Australia must enact a comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.

Recommendation

Australia must not enact the proposed Religious Discrimination Bill.