

Scope of international obligations



Australian Human Rights Commission

Australia's third UPR | 2021

Background

Australia has ratified the following human rights instruments:

ICCPR	✓
ICESCR	✓
ICESCR-OP1	✗
ICERD	✓
CEDAW	✓
CEDAW-OP1	✓
CAT	✓
CAT-OP	✓
CED	✗
CED: Article 31 and 32 declarations	✗
CRC	✓
CRC-OP1	✓
CRC-OP2	✓
CRC-OP3	✗
CMW	✗
CMW: Article 77 declaration	✗
CRPD	✓
CRPD-OP	✓

Key Issue - Implementation of OPCAT

Australia ratified OPCAT in December 2017 and made a declaration under Article 24 to postpone implementing the NPM for a maximum of three years. This will expire in December 2022.

The Commission considers that progress towards implementation of OPCAT to date has been too slow. Many critical questions, including the designation and operation of NPM bodies around Australia, are only partially resolved.

In 2020, the Commission released a report on [Implementing OPCAT in Australia](#) recommending that the Australian Government adopt an OPCAT implementation strategy that sets out clear timeframes, a formal framework for implementation, and a formal process for compliance.

Recommendation

Australian governments apply recommendations from [Implementing OPCAT in Australia](#) and commence operation of all NPM bodies without delay

Key Issue – Ratification of Conventions and Optional protocols

Australia has not ratified the International Convention on the Rights of Migrant Workers and their Families and previous Australian governments have indicated that there is no intention for Australia to become party to the convention. The protection of the rights of migrant workers is a significant issue within Australia's region and the Commission urges the Australian Government to consider ratifying the convention.

Australia also has not ratified the Optional Protocols for communications under the CRC and ICESCR. These communications protocols provide that any individual, under the ICESCR, and any child (or their representative), under the CRC, may submit complaints directly to the relevant UN Committee about violations of their rights under the conventions.

The ratification of these protocols could prompt the improvement of domestic remedies for breaches of economic, social, cultural and child rights, as individuals would need to have exhausted all domestic opportunities before bringing their complaint to the Committee.

The Australian Government has indicated that it is not planning to ratify either Optional Protocol.

Recommendation

Parliamentary Joint Standing Committee on Treaties conduct a National Interest Analysis on ratification of the Migrant Workers Convention and Optional Protocols to ICESCR and CRC



Key Issue – Withdrawal of treaty reservations and interpretive declarations to the CRPD

Australia has continuing reservations under the ICERD, ICCPR, CEDAW and CRC and maintains interpretive declarations under the CRPD.

The Commission maintains reservations to:

- CEDAW in relation to the provision of maternity leave with pay. The Commission considers that this reservation is no longer necessary following the introduction of a national paid parental leave scheme on 1 January 2011.
- Article 4 (a) of ICERD, relating to the criminalisation of racial hatred. Australia has previously agreed to consider withdrawing this reservation but has not developed a formal position.
- 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’.¹

- Articles 10, 14 and 20 of the ICCPR which require the segregation of child detainees, compensation for the miscarriage of justice and the prohibition of war propaganda and advocacy of national, racial or religious hatred.

Australia also maintains three interpretive declarations to the CRPD regarding supported or substituted decision-making arrangements, the ability to conduct compulsory treatment of persons, where such treatment is necessary and as a last resort, and commitments to non-discrimination in migration.

Recommendation

Government remove existing reservations to human rights treaties and withdraw its interpretive declarations to the CRPD

Endnotes

¹ 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.