

Australia's 2015 UPR—NGO Coalition Fact Sheet 2

Equality and Non-Discrimination

A comprehensive equality law

Australia has enacted a number of federal laws to prevent discrimination, including the *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth).

Together, these laws provide only piecemeal protection of the right to non-discrimination.

Specifically, Australia's anti-discrimination laws are deficient in that they:

- are reactive and complaints-based;
- fail to actively promote equality or address systemic discrimination;
- do not address all grounds of discrimination or intersectional discrimination¹, and
- are ineffective in areas that have been granted permanent exemptions or exceptions²;

Australia received a number of recommendations during the last UPR aimed at strengthening protections against discrimination.³

Unfortunately, a project to consolidate and strengthen federal anti-discrimination laws was deferred indefinitely in May 2013.

However, in the same year amendments were made to the *Sexual Discrimination Act 1984* (Cth) to add protections for the attributes of relationship status, sexual orientation, gender identity and intersex status.

Federal anti-discrimination laws remain inconsistent and outdated and should be reformed to provide effective protection from discrimination for all vulnerable groups.

Proposed Recommendation:

Australia should 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.

Constitutional guarantee of equality

The Australian Constitution does not enshrine the right to equality and it permits racial discrimination.⁴ As a result, anti-discrimination laws may be overridden by subsequent legislation, as has previously been the case with the Northern Territory Intervention Laws (see Fact Sheet on Aboriginal & Torres Strait Islander peoples).

However, since Australia's UPR in 2011, steps have been taken toward the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

Specifically, an Independent Expert Panel recommended a model for recognition to the Government in 2012. The *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed and funding has been provided for a public campaign to build community support.

¹ Domestic federal law does not extend to all attributes protected under international human rights treaties and does not include, for example, protection on the grounds of religion, social status, or as a victim of family violence/stalking.

² For example, broad exemptions exist for religious organisations under the *Sex Discrimination Act 1984* (Cth).

³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, Australia, 17th sess, UN

Doc A/HRC/17/10 UPR 2010 (March 2011), [86.23], [86.24] [86.41], [86.42], [86.44] [86.45], [86.46], [86.98].

⁴ The 'race power' in the Australian Constitution has been held by the High Court of Australia to permit the Australian Government to pass both beneficial and detrimental legislation in relation to persons of a particular race. See: *Kartinyeri v Commonwealth* (1998) 195 CLR 337.



Australia's Human Rights Score Card

In June 2015 the Australian Parliament's Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples released its final report including a recommendation that the Constitution be amended to guarantee non-discrimination.⁵

Proposed recommendation

Australia should ensure that non-discrimination and equality for Aboriginal and Torres Strait Islander Peoples is duly acknowledged and respected in the Australian Constitution, national laws and official policies, consistent with the UN Declaration on the Rights of Indigenous Peoples.

⁵ Joint Select Committee on the Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Final Report, (June 2015).