

# Constitutional and legal frameworks and access to remedies

## NGO Coalition Fact Sheet 2 (LOIPRs 1-6)

### No Human Rights Act (page 10)

In Australia, human rights are not given comprehensive and consistent legal protection. There is still no bill of rights or similar legislative protection.

In 2010, the Australian Government adopted a human rights framework. Most of the elements of the framework have since been terminated or suspended.

**Australia should introduce a comprehensive, judicially enforceable Human Rights Act.**

### OPCAT (page 12)

Australia has announced that it will ratify the OPCAT by December 2017.

Once it does so, it will need to ensure that the Subcommittee on the Prevention of Torture (SPT) and the National Prevention Mechanism (NPM) can inspect all places of detention under Australia's control. .

**Australia should:**

- **enter into formal agreements with all states where it detains asylum seekers and refugees, to ensure that the SPT and Australia's NPM are able to access and monitor conditions in detention centres that Australia finances, operates or is otherwise responsible for, to ensure compliance with articles 7, 9, 10 and 14.**
- **grant the SPT and the NPM access to any vessels conducting turn back operations.**

### PJCHR (page 11)

In 2012, the Parliamentary Joint Committee on Human Rights (PJCHR) was established to scrutinise legislation for compliance with the core human rights treaties.

The PJCHR provides a robust human rights review of proposed legislation. However, it is routinely ignored, its recommendations are unenforceable, and its reports are often delayed by government's late responses.

In one instance, the PJCHR found that a proposed "Foreign Fighters" bill, which created an effective travel ban, was contrary to the right to a fair trial and the presumption of innocence. The government passed the bill anyway.

Also, the PJCHR is only able to inquire into broader human rights issues on referral from the government.

Further, the Statements of Compatibility that accompany legislation often feature poor human rights analysis.

**Australia should improve the quality of Statements of Compatibility and its responses to the findings of the PJCHR and amend s 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to allow the PJCHR to conduct own-motion inquiries into human rights issues.**

### Implementing treaty body views (page 12)

Since 1994, Australia has been found to be in breach of its international obligations in 45 individual communications.

Australia has only fully remedied the author of the communication in 13% of these cases.

**Australia should implement the views of treaty bodies and, where necessary, provide remedies in accordance with those views.**

## Reservations to the ICCPR

(page 13)

Australia has still not withdrawn its reservations to:

- arts 10(2)(a) and (b) and 10(3) (segregation of juvenile detainees);
- art 14 (compensation for miscarriage of justice); and
- art 20 (war propaganda and advocacy of national, racial or religious hatred to be prohibited by law).

**Australia should withdraw its reservations to articles 140, 14 and 20.**

## Constitutional recognition

(page 13)

The constitution does not currently recognise the distinct identity and existence of Aboriginal peoples. No model of constitutional change has been finalised and no timeframe for a referendum has been announced.

In May 2017, delegates from the First Nations Regional Dialogues released the Uluru Statement from the Heart (Uluru Statement).

The Uluru Statement declares that Aboriginal and Torres Strait Islander peoples were at all times sovereign, calls for recognition in a constitutionally-enshrined voice to parliament, seeks the establishment of a Makaratta (treaty) Commission to negotiate an agreement with government that addresses the inherent power disparity and entrenched disadvantage of Aboriginal and Torres Strait Islander people.

And separately, the Referendum Council has recommended that the government hold a referendum to establish an Indigenous voice to parliament.

The Australian Government is yet to respond to the Uluru Statement or the Referendum Council.

Australia should

- **undertake concrete steps to implement the Final report of the Referendum Council, dated 30 June 2017, which recommends that the Australian Government:**
  - **establish a constitutional referendum to include an elected Aboriginal and Torres Strait Islander body in the Constitution, to provide a direct voice to Parliament on matters significantly impacting Indigenous peoples.**
  - **develop an extra-constitutional statement of recognition for Aboriginal and Torres Strait Islander peoples.**
  - **undertake concrete steps to establish a Makaratta Commission that incorporates and facilitates a process for Truth Telling, as recommended by the Referendums Council's Final Report and the Uluru Statement.**
  - **undertake further consultations with Aboriginal and Torres Strait Islander communities on the structure and function of the representative body and that these consultations be led by Aboriginal and Torres Strait Islander people and organisations.**
- **develop and adopt an apt legal framework for the promotion and protection of fundamental human rights of Indigenous Peoples of Australia including the thorough prohibition of racial discrimination against the Indigenous Peoples by way of legislation and administrative actions.**