

**Statement to UN Committee on the Elimination of Racial Discrimination
Geneva, Switzerland
27 November 2017**

Chair and committee members: thank you for the opportunity to address you.

I am pleased to join you as Australia's Race Discrimination Commissioner and as a representative of the Australian Human Rights Commission. The Commission is an 'A status' national human rights institution. It has a statutory power to promote and protect human rights in Australia, including those rights enshrined in the Convention on the Elimination of All Forms of Racial Discrimination.

Racial discrimination in multicultural Australia

Australia is a multicultural country. The people of Australia come from more than 300 ancestries, reflecting our recent history as a nation of immigration. More than 25 per cent of our population was born overseas, and about 49 per cent have at least one parent born overseas. Australia's Aboriginal and Torres Strait Islander population is also a growing one, as befits a country home to the world's oldest continuing culture.

For the most part, this diversity is an accepted reality in Australia; most Australians regard it as a strength of our national life. The Scanlon Foundation's Mapping Social Cohesion, the most authoritative annual survey on national attitudes, found in 2016 that 83 per cent of Australians agree that multiculturalism has been good for the country.

However, racism continues to be present in Australian society. The Scanlon Foundation's research, which I just cited, found in 2016 that 20 per cent of Australians had experienced discrimination based on race, ethnicity or religion – up from 15 per cent in 2015.

The experience of some groups warrants special attention. Aboriginal and Torres Strait Islander people encounter much higher levels of racial discrimination compared to the general population, reflecting their experience of institutional and structural racism. Migrants from African countries, and other non-English speaking backgrounds, report relatively high levels of discrimination. Research also indicates there has been a rise in hostile or negative public sentiment towards Muslims.

There are, then, some clear indications that racial intolerance and racial discrimination are on the rise. It is especially concerning that, as in many other countries, extreme nationalist organisations have grown in prominence within public debates about race and immigration.

Australia's compliance with the Convention is critical in combating racial discrimination and in safeguarding our racial harmony.

Implementation of the Convention

Australia implements the Convention primarily through the *Racial Discrimination Act 1975* (Cth). The Act was the first human rights and anti-discrimination legislation introduced by the Australian Parliament.

The *Racial Discrimination Act* protects people across Australia from unfair treatment on the basis of their race, colour, descent, or national or ethnic origin in different areas of public life. It also makes racial vilification unlawful. The Commission can investigate and conciliate complaints made under the Racial Discrimination Act by people who experience direct or indirect discrimination. Since its introduction in 1975, the Act has been used to conciliate more than 6000 complaints successfully.

The *Racial Discrimination Act* provides all Australians with an important and essential protection against racial discrimination. But the Act does not reflect a complete implementation of the Convention.

First, it is possible for other federal legislation to override or suspend the operation of the *Racial Discrimination Act*. This was the case, for example, with the legislation that brought into effect the Northern Territory Emergency Response in 2007.

Second, 'special measures' under the Act do not fully comply with the Committee's General Comment No 32. This is because there is no requirement under the Act for affected groups to be consulted and participate in the design and implementation of proposed special measures.

Third, the Act does not criminalise racial hatred. The Act provides only a civil prohibition of racial hatred. The Australian Government has exercised a reservation to article 4 of the Convention.

Finally, Australia's constitutional arrangements still allow for racially discriminatory laws to be passed. Section 25 of the Australian Constitution contemplates state governments disqualifying a group of people from voting based on race. Under section 51(xxvi), the Australian Parliament may pass laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.

The Australian Human Rights Commission has made recommendations for the full domestic implementation of the Convention. We have opposed the passage of federal laws, which would have the effect of undermining the Racial Discrimination Act and the spirit of the Convention. And we have advocated for the removal of sections and clauses which permit racial discrimination from the Australian Constitution.

Developments since Australia's last appearance

There have been a number of positive developments since Australia's previous periodic review before this Committee. This includes:

- the establishment of the Parliamentary Joint Committee on Human Rights to scrutinise federal legislation for compatibility with the Convention and other international human rights treaties;
- the appointment of a full-time Race Discrimination Commissioner (the office I currently occupy);
- the establishment of the National Congress of Australia's First Peoples as a representative body for Aboriginal and Torres Strait Islander peoples;

- the creation of a National Anti-Racism Strategy, including a public anti-racism awareness campaign (Racism. It Stops with Me), led by the Australian Human Rights Commission;
- the adoption of a new multicultural policy statement, 'United, Strong, Successful';
- progress towards closing the gap in Year 12 attainment rates between Aboriginal and Torres Strait Islander students and non-Indigenous students; and
- the adoption of the National Aboriginal and Torres Strait Islander Health Plan 2013- 2023 (and associated Implementation Plan).

However, there is still much to do.

We have, in our submission, offered 44 recommendations to improve Australia's compliance with the Convention. These include recommendations concerning those most vulnerable to racial discrimination: Aboriginal and Torres Strait Islander peoples, migrants, and members of culturally and linguistically diverse communities. We have also highlighted issues such as discriminatory police practices, counterterrorism, immigration detention and multicultural policy.

Three 'priority areas'

I would like to identify three 'priority areas', about which the Committee may wish to consider seeking updates from the Australian Government within the next 12 months.

The first priority area concerns data collection.

There is currently no comprehensive process for collecting data about racial discrimination, racial and cultural diversity, racially motivated crimes and multiculturalism. Through my work as Commissioner, the Commission has sought to develop methodology for collecting better data on the representation of cultural diversity in positions of leadership in business, government, politics and civil society.

More systematic collection of data, though, is required. Better data would enable better understanding of racial disparities in areas including employment, health, education, and the criminal justice system.

The second priority area concerns juvenile detention in the Northern Territory, where 94 per cent of children in detention are Aboriginal.

I would like to draw the Committee's attention to the Royal Commission into the Protection and Detention of Children in the Northern Territory, whose findings were released on 17 November 2017. The Royal Commission found that youth detention centres in the Northern Territory are not fit for accommodating or rehabilitating children and young people. It found that children were subjected to physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets.

The Royal Commission made many recommendations, including that the current Don Dale Youth Detention Centre be closed down and that Aboriginal organisations be involved in juvenile detention. The Commission has urged

that the Australian Government implement the recommendations of the Royal Commission.

The third priority area concerns discriminatory police practices.

The Federal Court Of Australia last year held that the State of Queensland, through its police service, breached the Racial Discrimination Act. The case involved conduct of police officers following the death of an Aboriginal man in police custody on Palm Island. The Court found that some or all relevant police officers:

- did not act impartially and independently in their investigations;
- failed to communicate with the Palm Island community and defuse tensions;
- evacuated only non-Aboriginal people from the island following a fire at a police station; and
- carried out arrests that were unnecessary and disproportionate.

The Court held that, if the events took place in an isolated non-Aboriginal community in Queensland, such conduct would not have occurred.

The Commission recommends that the Committee follow-up on the Australian and Queensland governments' response to this decision. Moreover, we recommend that police be trained in cultural competency and anti-racism. We also recommend that all Australian governments to implement independent review mechanisms to monitor compliance of police practices with the Convention and the Racial Discrimination Act.

Other areas of significant concern

There are two additional areas of concern to the Commission, about which I wish to speak today.

First, the Committee will be aware of the First Nations National Constitutional Convention to discuss constitutional recognition, which was held in May 2017. Through the Uluru Statement from the Heart, the Constitution Convention proposed the establishment of a constitutionally-enshrined First Nations' Voice to Parliament and a Makarrata Commission to supervise a process of agreement making between governments and First Nations.

The Commission expresses its significant concern about the Australian Government's rejection of the proposal for the First Nations' Voice to Parliament. We have recommended that the Australian Government develop with Aboriginal and Torres Strait Islander peoples a model for constitutional recognition and negotiate in good faith about establishing national representative mechanisms.

Second, we note the concerns of Arab and Muslim Australians, which have been reported to the Commission. In particular, there are concerns that public anxiety about terrorism have heightened prejudice towards and discrimination against Arab and Muslim Australians. It is vital that counter-terrorism laws are subject to ongoing reviews to ensure compliance with Convention rights and essential that all Australian governments are vigilant about the risk of racial profiling.

Conclusion

It is on this note of vigilance that I conclude. Australia's success as a multicultural society is one worthy of celebration – but it must not induce complacency. It remains of urgent importance that the *Racial Discrimination Act* continues to set a standard for racial equality and tolerance, that there are steps taken to strengthen Australia's multiculturalism, and that Australian governments respond to findings of racial discrimination. On behalf of the Australian Human Rights Commission, I thank the Chair and the Committee for this opportunity, and look forward to your concluding observations.

ENDS