

# REFUGEE COUNCIL OF AUSTRALIA

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## STATEMENT ON PROTECTION OF HUMAN RIGHTS

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Australia has long been regarded as a country where human rights and the rule of law are treated with respect. Not only did we lead the way with the promotion of human rights through the development of National Action Plans but Australia has been active in promoting the establishment of national human rights institutions in the region.

Sadly the tide has turned. Time and time again<sup>[1]</sup> of late Australia has been found wanting by international bodies whose role it is to monitor the observance of international human rights treaties - most particularly in relation to the treatment of indigenous Australian and asylum seekers. On each occasion the Government's response has been to deny the criticism, claim "interest groups" have unduly influenced the findings and/or deride the monitors. Most recently - at the end of July - senior Federal and State politicians attempted to brush aside a severe rebuke from the United Nations Human Rights Committee by talking of international do-gooders meddling in our affairs and challenging our sovereignty.

In examining the current political response it is important to consider the following:

- Australia presided over the adoption of the Universal Declaration of Human Rights in 1948 and since then has been at the forefront of initiatives to create intentional human rights instruments and the mechanisms to monitor their implementation;
- Australia has acceded to all of the major international human rights treaties and in so doing, has made a commitment to comply with the obligations contained therein;
- Australia has also signed the agreement (the First Optional Protocol to the International Covenant on Civil and Political Rights) that enabled anyone who believes their rights have been abused to have their complaint considered by a specialist committee of international legal experts elected by the governments who are signatories to the treaty (the United Nations Human Rights Committee).

In other words, we are not talking about laws developed by foreigners and imposed upon an unwilling Australia. What we do have are international agreements that Australia participated in the drafting of, actively promoted accession to by others and willingly signed itself.

The importance of Australia's International treaty commitments takes on an added dimension when one recognises that:

- unlike many countries around the world including Canada and the United States, Australia does not have a Bill of Rights;
- the Australian Constitution is largely silent on human rights issues as it was drafted at a time when concerns could be addressed to the Privy Council in "Mother England";

- despite having signed the various treaties, very little of their contents have been incorporated into domestic law and therefore Australian courts are not able to deliberate on whether a person's rights under the treaties are being abused;
- unlike Europe where there is the European Human Rights Treaty, there are no regional human rights treaties in our region.

So with no domestic remedies to speak of and no regional treaty bodies to whom we can turn, the UN human rights monitoring bodies are of particular importance for Australians. Without them the rights of individuals and groups within our society could be abused and there would be nowhere to seek help.

No government is beyond making mistakes. No government is immune from putting the interests of one group ahead of others. No government can say that it will never be influenced by sectoral interest groups. Individuals whose rights are infringed by the decisions of government must have a way to challenge these decisions. It is both dangerous and arrogant for any government to believe that it can operate beyond scrutiny.

At present the Australian government is falling into the trap of believing that it is a power unto itself. Not only is it failing to give due consideration to adverse findings of the treaty monitoring bodies, it is also considering withdrawing from them. If this were to happen, it would:

- take away the only protection Australians have against rights violations;
- significantly effect marginalised groups within the community - not only refugees and asylum seekers but also indigenous Australians, the unemployed, the aged, the disabled ...;
- diminish the respect in which Australia is held in the international community; and
- undermine the ability of Australia to promote and protect human rights within this region and internationally.

As an organisation whose central focus is refugees and asylum seekers, the current trend is of particular concern to the Refugee Council of Australia. Not only is the government failing to address the concerns about its own treatment of refugees and asylum seekers levelled by the Council and many other domestic and international organisations[2], but is also backing itself into a corner where it will no longer be able to make an effective contribution to assisting the international efforts to promote and protect refugees.

We recognise, however, that what is happening is not just about refugees but about all Australians. The same principles apply to us all. We therefore argue that it is important for Australians to recognise the danger of the path currently being trodden by the Government and to call a halt to the retreat from the basic principles of fairness and decency that for so long have underpinned our notion of the country in which we live.

[1] In 1997 Australia was challenged by the UN Human Rights Committee on its policies relating to immigration detention. The same year it also rejected as "impertinent" attempts by the European Union to include a standard human rights clause in trade agreements and was challenged by the Committee on the Elimination of Discrimination Against Women to "resume its active and visible participation in forums on women's equality". In 1999 the UN Committee for the Elimination of Racial Discrimination (CERD) raised concerns about the Native Title Act and earlier this year the same committee expressed concern about mandatory sentencing in Western Australia and the Northern Territory..

[2] These include the Human Rights and Equal Opportunity Commission, the Law Council of Australia, Amnesty International and the International Commission of Jurists.