

**Australian Government response to 27 August 2010
Concluding Observations of the UN Committee on the
Elimination of Racial Discrimination (CERD)**

CERD Concluding Observation 11

While taking account of the State party's commitment to the Australian Human Rights Commission (AHRC), the Committee regrets the absence of a full-time Race Discrimination Commissioner since 1999 and notes with concern the challenges the AHRC faces regarding limited powers, capacity and funding (art. 2).

The Committee urges the State party to support the proper performance of the AHRC, through adequate financing and staffing, including through the appointment of a full-time Race Discrimination Commissioner. It also recommends that the State party consider expanding the powers, functions and funding of the AHRC.

The Australian Human Rights Commission's (AHRC) Powers and Functions

The Australian Human Rights Commission (AHRC) is an independent statutory authority that meets the criteria for independent human rights institutions set out in the *Paris Principles*. The AHRC currently holds an 'A status' accreditation from the International Coordinating Committee (ICC) Subcommittee on Accreditation.

The AHRC's functions include: education and awareness raising, investigating and conciliating complaints about unlawful discrimination, conducting national inquiries and reporting on issues of major human rights concerns. The AHRC also advises Government on existing and proposed legislation and its consistency with human rights standards recognised by Australia.

The project to consolidate Commonwealth/Australian anti-discrimination laws will review the design of the complaints handling process and the related role and functions of the AHRC.

The Australian Government acknowledges the valuable role the AHRC plays in promoting and protecting human rights in Australia. The Government works in partnership with the AHRC to build human rights capacities in Australia and abroad.

For example, as part of Australia's Human Rights Framework, the AHRC is:

- contributing to the development of new human rights education materials and an evaluation strategy for the Human Rights Public Sector Education Program, and
- providing advice about the targeting of grants under Australia's Human Rights Framework Education Grants Program.

The Government also works with the AHRC, the Asia Pacific Forum of National Human Rights Institutions, other governments, civil society and regional governmental organisations to establish and build the capacity of national human rights institutions across the region. In October 2010, the Government committed to extending its work with the AHRC to build the capacity of the Association of Southeast Asian Nations Intergovernmental Commission on Human Rights.

Funding

The Government is aware of concerns raised by the AHRC regarding its level of funding.

For the 2011-12 financial year, the AHRC received A\$16.49 million in appropriation funding and has an average of 118 full time staff members at any one time.

Australia's Human Rights Framework, released in April 2010, provides additional funding of A\$6.6 million from 2010 to 2014 to the AHRC to expand its human rights education role and enhance its capacity to respond to inquiries and conciliate complaints.

The AHRC has also received additional funding of A\$4.3 million over four years to continue its work addressing social marginalisation and alienation of international students, youth and women from new and emerging communities (such as African communities).

The Government will also provide A\$5.7 million over four years in new funding for the AHRC to:

- restore the stand-alone positions of Race and Disability Discrimination Commissioners; and
- fund Australia's first stand-alone Age Discrimination Commissioner, the Hon Susan Ryan AO, and a support team in AHRC.

The Australian Government will continue to adequately fund the AHRC.

Race Discrimination Commissioner

On 29 July 2011, the Australian Government appointed Dr Helen Szoke as Australia's stand-alone Race Discrimination Commissioner. Dr Szoke will commence this role on 5 September 2011.

As Race Discrimination Commissioner, Dr Szoke will work with the community, employers and the Government to combat racism and intolerance, promote racial equality and cultural diversity, and give a voice to those who have suffered discrimination.

Mr Graeme Innes will continue to perform the role of Race Discrimination Commissioner until Dr Szoke begins with the AHRC. Dr Szoke's appointment will allow Mr Innes to devote his attention to addressing the issues faced by Australians with disability.

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The Committee expresses its concern that the package of legislation under the Northern Territory Emergency Response (NTER) continues to discriminate on the basis of race including through the use of so-called "special measures" by the State party. The Committee regrets the discriminatory impact this intervention has had on affected communities, including restrictions on Aboriginal rights to land, property, social security, adequate standards of living, cultural development, work and remedies. While noting that the State party will complete the reinstatement of the Racial Discrimination Act in December 2010, the Committee is concerned by the continuing difficulties in using the Act to challenge and provide remedies for racially discriminatory NTER measures (arts. 1, 2 and 5).

The Committee urges the State party to guarantee that all special measures in Australian law, in particular those regarding the NTER, are in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures. It encourages the State party to strengthen its efforts to implement the NTER Review Board recommendations, namely that: it continue to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory; that it reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and that Government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.

The Australian Government has fully reinstated people's rights and protections under the *Racial Discrimination Act 1975* (RDA) in relation to the Northern Territory Emergency Response (NTER). Under legislation that was passed by the Parliament on 21 June 2010, all of the provisions in the NTER legislation that suspended the operation of the RDA are removed. In addition, all of the provisions in the NTER legislation that deemed certain measures, such as income management, five-year leases and alcohol and pornography restrictions to be special measures have been repealed. The repeal of these provisions took effect from 31 December 2010. People now have the right to take appropriate proceedings under the RDA in the Australian Human Rights Commission and the courts. Whether there has been a breach of the RDA will be a matter for the Australian Human Rights Commission and the courts to consider.

A new non-discriminatory income management scheme was introduced on 1 July 2010. The new income management scheme is RDA compliant. Before introducing the legislation, the Government undertook extensive consultations with Indigenous people across the Northern Territory (NT).

The Australian Government acquired five year leases by legislation over 64 communities as part of the NTER, as an interim measure to ensure security of tenure for government facilities; the roll out of property and tenancy management reforms; and the implementation of government programs dependent on secure tenure. No resident or existing occupier of the areas covered by the leases were removed from the area as a result of the leases. The Australian Government is committed to making fair rent payments to the land owners of the five year lease communities. The rent payments were independently determined by the Northern Territory Valuer-General and the Australian Government commenced making rent payments in accordance with these determinations as required under the NTER legislation. The Australian Government has been working with the Northern Land Council, the Central Land Council and the Northern Territory Valuer-General in order to address concerns with rental amounts.

The Australian Government is not continuing the five year leases beyond their expiry in August 2012 and is working with communities on the negotiation of voluntary, longer term leases.

Leases recognise the rights of Indigenous people as owners of land, by negotiating agreed land use arrangements with traditional owners prior to the construction of new housing and infrastructure on Indigenous land. Ownership of leased land remains with the Indigenous owners. Creating tenure arrangements which provide security to landowners, investors and land users, through mechanisms such as voluntary long term leasing, is a critical step in recognising Indigenous ownership and making land users responsible for assets. In relation to community housing, leases ensure that governments, rather than land owners, take responsibility, and are accountable, for housing construction standards, for long term repairs and maintenance programs and tenancy management systems. Before leasing was introduced, responsibility for housing maintenance was often unclear.

Commercial investment on Indigenous land is hampered in that it is generally communal and inalienable, preventing landowners individually or corporately from raising finance for commercial purposes and home ownership. However, voluntary long term leases have the potential to enable individuals to pursue home ownership and business opportunities on Indigenous land, as is available elsewhere in Australia.

The Australian Government has committed substantial funds to address social disadvantage of Indigenous people in the NT including \$A1.2 billion through the Northern Territory Emergency Response.

As at the end of 2010, this has enabled, for example, the provision of:

- more than 60 additional police,
- 18 additional police stations,
- night patrols in 80 communities,
- 22 safe houses,
- 146 additional teachers in NT schools,
- more than 7,000 meals each school day for school children in remote communities,
- 92 community stores providing a better range of healthy food through being licensed, and
- a comprehensive program of over 10,600 child health checks and over 24,000 follow-up specialist services.

In the extensive consultations undertaken in 2009, a common theme expressed was that children, the elderly and women were now feeling safer, were better fed and clothed, were getting a better night's sleep, and there was less inappropriate pressure on income support recipients for money. People felt that this was due to the combined effects of various NTER measures, including alcohol restrictions, community stores licensing, an increased police presence in remote communities and income management (which at the time of those consultations was an NTER measure).

Further the Government has committed \$A1.7 billion for remote Indigenous housing in the NT over 10 years. As at mid May 2011, more than 1,050 Indigenous people have been employed in housing and construction works as a result of this investment.

In addition, 2,241 ongoing jobs were created in Australian and Northern Territory Government service delivery, moving people out of positions in Community Development Employment Projects into employment with wages, superannuation and other benefits.

Nothing in the NTER is intended to restrict Indigenous cultural development. The Closing the Gap agenda recognises and builds on the strengths of Indigenous cultures and identities, and the

Australian Government continues to support Indigenous culture, languages, music and broadcasting through a range of funding and grants programs to arts and cultural organisations and individual artists from across Australia.

On 22 June 2011, the Government announced its next steps to improve the future of Indigenous Australians living in the Northern Territory. The Government will be undertaking consultations with Aboriginal people and communities on future plans to tackle disadvantage, with a particular focus on improved education for children, expanded employment opportunities and tackling alcohol abuse. The Government released a discussion paper, *Stronger Futures in the Northern Territory*, as the basis for consultations over the coming months. The paper invites community views on where the NTER worked, where it could be improved and what more needs to be done in future.

CERD Concluding Observation 23

The Committee is concerned by information related to the personal security of international students and, in particular, the series of racially motivated assaults of Indian students, including one death, in the State of Victoria. It regrets the failure by the Government and police (both at the state and federal levels) to address the racial motivation of these acts, as well as the lack of available national data on the prevalence of migrants as victims of crime (arts. 2, 4 and 5).

The Committee recommends that the State party further intensify its efforts to combat racially motivated violence, including by requiring law enforcement authorities to collect data on the nationality and ethnicity of victims of such crimes and ensuring that judges, prosecutors and the police consistently apply existing legal provisions which consider the motive of ethnic, racial or religious hatred or enmity as an aggravating circumstance. It recommends that the State party provide updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims.

The Australian Government would like to note the following points about safety concerns of international students and about the “racial motivation” attributed by the Committee to assaults against international students in Australia.

Death in the State of Victoria

The Committee comments on what it describes as a “series of racially motivated assaults of Indian students, including one death, in the State of Victoria”. The reference to one death is assumed to be the tragic murder of Indian student Mr Nitin Garg on 2 January 2010, which is still before the Victorian courts. In the series of court hearings on this murder held during 2010-11 there has been no evidence presented that would indicate that this crime included racial motivation. On 20 April 2011, an Australian teenager pleaded guilty to the murder and informed the Victorian Supreme Court that the motive was to steal Mr Garg's mobile phone. On 6 June 2011, prosecutor Amanda Forrester told the court that there was “no evidence of any racial motivation in this crime”. One person has already been convicted and sentenced for being an accessory to this offence. No evidence of racial motivation was presented in that case.

Alleged failure to address “racially motivated violence”

The Australian Government rejects the Committee’s assertion that Australian governments at state and federal level, have failed “to address the racial motivation” of assaults on international students in Australia.

Australia has zero tolerance for racism. A small number of assaults in Australia, as in other countries, have racial overtones. Offenders face the full force of the law. The Australian Government and community condemn any assaults, irrespective of nationality or ethnicity. Such crimes are an affront to our values and are anathema to our view of modern Australia. In Australia, the rule of law is fundamental. We allow the processes of investigation, prosecution and sentencing to take their course.

Australian jurisdictions have legal provisions to address ethnic, racial and religious hatred whenever such crimes take place. Australian State and Territory law enforcement authorities have been particularly responsive to community and international concerns that any assaults on international students may have been racially, ethnically or religiously motivated.

Victoria hosts around one half of all Indian students in Australia. The Victorian Government has sought to further strengthen law enforcement in response to allegations of racial assaults on Indian students studying in Victoria. In 2009, Victoria strengthened sentencing laws to better ensure judges take into account hatred for, or prejudice against, a particular group when sentencing anyone accused of criminal assaults or other such attacks.

In April 2010, the Victorian Government announced police numbers would be increased by 1,966 over the next five years - the biggest one-off boost to police numbers in Victorian history. Approximately 600 additional police officers have already been deployed, including to crime hot spots and public transport. Police have also been given stronger powers to combat violence and antisocial behaviour, including additional search powers for weapons in designated areas.

The Australian Government also implements preventative measures to address racism. As part of the Government's new multicultural policy, for example, a National Anti-Racism Partnership and Strategy is being developed. The National Anti-Racism Strategy will focus on five key areas: research and consultation, education resources, public awareness, youth engagement; and ongoing evaluation.

Lack of relevant national data on victims of crime

Australian Police forces do not routinely collect data on victims' nationality, ethnicity or immigration status, but the Australian Government has recognised the need for credible data on crimes against international students. An Australian Institute of Criminology (AIC) study on crimes against international students was already in progress prior to CERD's consideration of this issue. The AIC study was released on 11 August 2011. We have provided a copy of the 172 page report with this response. The report is available on the AIC website (www.aic.gov.au).

The analysis was based on cross-matching Student visa data from the top five source countries (China, India, Republic of Korea, Malaysia, US) for the period July 2004 to May 2010 with police data in each Australian jurisdiction. Australia's Department of Immigration and Citizenship submitted an application for a Public Interest Determination by the Privacy Commissioner to enable the use of Student visa data in the study and this was granted in May 2010. No personal information from the AIC's study was published. There was a 21-day period in which affected current and former students could opt out of the study.

The nature of the data did not allow the AIC to engage in specific analysis of racial motivation. That said, there was nothing in the overall findings that lends support to the view that Indian students have been singled out primarily for racial reasons.

Key findings from the study were that rates of assault for Indian students were lower than or on par with rates for the general Australian population. Rates of robbery against Indian students were higher than average for Australians in larger states for most years. The proportion of robberies against Indian students occurring at commercial locations was approximately double that recorded for students from other countries. Over half of robberies against Indian students on commercial premises occurred at service stations.

The report noted that robbery is an opportunistic crime. The higher rates of robbery against Indian students, compared with other international students, and Australian comparison populations, appeared to be more likely to occur because of a range of factors: in particular, differences in employment, with large numbers of Indian students working in higher-risk employment (taxi driving and in convenience/fast food stores and service stations), working evening/night shifts and their use of public transport.

As the data for the study did not include offender profiles, the AIC could not engage in specific analysis of racial motivation. The fact that assault rates on Indian students were either below or the same as the rates of assault for the general Australian community suggests that race was not a primary motivation.

The Australian Government will consider other options for collecting and analysing data on victims of crime. The AIC study will inform future work in this area.

International Student Welfare

In 2009, the Council of Australian Governments commissioned an International Students Strategy for Australia which was launched in October 2010. The Strategy outlines initiatives to address four key areas of concern including student wellbeing, consumer protection, the quality of education and the availability of better information for students. These initiatives include a student personal safety guide, information portal, a national community engagement strategy and a requirement for all international education providers to develop a provider student safety plan. The initiatives build on actions already taken by Australian governments to ensure international students remain safe and come home with a first-class education and a great Australian experience.

In January 2010, the Victorian Government launched an International Student Care Service, a 24-hour service where international students can get greater access to accommodation, counselling, legal services, emergency and welfare assistance. In May 2011, the Victorian Government announced funding of \$A3.7 million over four years to maintain the International Student Care Service.

Australia's federal Minister for Tertiary Education, Skills, Jobs and Workplace Relations released an International Student Survey in December 2010. The key findings of the survey included that 84 per cent of international student respondents were 'satisfied' or 'very satisfied' with their study experience and 86 per cent were satisfied with their overall living experience in Australia. 85 per cent of tertiary student respondents indicated satisfaction with the level of support that they received on arrival to Australia. The large majority of international students indicated that they felt 'fairly safe' or 'very safe' on campus – a view expressed by 96.8 per cent of male and 95.6 per cent of female respondents.

The Australian Government continues to implement recommendations from the 2010 Review of the Education Services for Overseas Students (ESOS) Act by the Hon Bruce Baird AO, which complement the student welfare objectives of the International Students Strategy for Australia. Greater protection for international students will be available following the enactment of the first tranche of the legislative changes recommended by the Baird Review. The ESOS Amendment Act, which commenced on 8 April 2011, aims to protect international students by further strengthening education providers' registration requirements and expanding the role of the Commonwealth Ombudsman for external complaints by international students relating to private providers.

Also relevant to student welfare, the Australian Government appointed the Hon Michael Knight AO to undertake a strategic review of Australia's student visa program in 2011, and the report is being considered by government. Australia would be pleased to keep the Committee informed of new developments relevant to international student welfare in Australia.