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FECCA Submission on Australia's Compliance with the UN International Convention on the Elimination of all Forms of Racial Discrimination (CERD Convention) 2002- 2008

Executive Summary

This submission provides input into Australia's compliance in relation to articles 2-7 of CERD. It has examined the recommendations made by UN in its concluding observations of Australia's 14 and 15th reports, 2005 and made note of Australia's progress in working towards compliance following these.

The submission highlights the areas where Australia needs to work towards meeting its obligations under CERD. Since the previous reports it is clear that many issues surrounding the elimination of racial discrimination remain. In particular, FECCA is concerned that there is no Commonwealth legislation against religious vilification and that legislation is not consistent across all states and territories. This subjects people from Muslim communities to greater risk of discrimination, given they do not fit within any specific ethnic profile. In addition FECCA believes that the lack of successful prosecutions against racial vilification indicates that a review of the legislation needs to be undertaken. FECCA supports a Bill of Rights and calls for changes to legislation that will protect its citizens from racial and religious vilification.

FECCA believes that discrimination against Muslim people as a group has increased since the previous reports and that the Australian media's reporting and misrepresentation of Culturally and Linguistically Diverse (CALD) Australians has contributed to this, as in the case of the Cronulla riots reporting. In addition, we are dismayed at the emergence of bias against Australia's new and emerging African communities.

FECCA acknowledges and supports initiatives implemented to remove barriers for CALD and Indigenous Australians. FECCA welcomes initiatives by the Government such as the withdrawal of the Migration Amendment (Designated Unauthorised Arrivals) Bill which was discriminatory towards asylum seekers, the dismantling of the Pacific Solution, and the abolishment of Temporary Protection Visas. However, we are concerned that offshore processing continues with plans

to increase the offshore program on Christmas Island. FECCA believes that regardless of their process of arrival in Australia, all refugees have a right to protection and legal access. FECCA welcomes the review of the Citizenship Test and calls for provisions to be made for people whose literacy levels are low or who come from oral cultures, such as refugees and humanitarian entrants.

FECCA also welcomes the Parliament's formal national apology for the 'stolen generation' of Indigenous Australians and its show of commitment to human rights by becoming signatories to the UN Declaration on the Rights of Indigenous People. FECCA supports recommendations made in HREOC's 'Bringing Them Home' Report for reparations to be made to respond to and redress violations of human rights.

FECCA is concerned however, that the recent repeal of the Racial Discrimination Act (RDA) in 2007 in order to carry out its Northern Territory intervention in Indigenous communities breaches obligations Australia has as a signatory to the Convention on the Elimination of All Forms of Racial Discrimination (Article 1.4) and is contradictory to the 2005 CERD recommendations.

The most vulnerable groups of CALD Australians are still experiencing barriers to services that deny them civil rights. The need for high level literacy and English proficiency creates a barrier for many people for both CALD and Indigenous communities in the areas of accessing legal services, health, housing and education. FECCA calls for continued effort in assisting CALD Australians to exercise their civil rights within these areas.

FECCA Recommends:

- Mandatory reporting by all Government departments against the *Charter of Public Service*;
- Legislation to prohibit discrimination and vilification on the ground of religion and to criminalise such activities;
- A Bill of Rights, developed through consultation with the community;
- A review of the threshold for complaints against racial and religious vilification to address the continued lack of successful convictions;
- Ensuring media organisations fulfil their obligation to be socially responsible, fair, accurate, thorough, comprehensive and balanced;
- Greater access to legal, health, education, language and training services for CALD and Indigenous Australians.
- Onshore processing of asylum seekers and refugees, granting access to legal systems, administrative and judicial review and trauma care and support;
- Alternative provisions to the Citizenship Test for refugees, humanitarian entrants and migrants whose literacy levels are low or who come from oral cultures;
- Recognition of overseas qualifications of skilled migrants;

- Restoration of the RDA in the Northern Territory; and
- The establishment of a reparations tribunal to achieve meaningful reconciliation for Indigenous Australians of the 'stolen generation'.

Compliance with Articles 2-7 of the International Convention of all Forms of Racial Discrimination (CERD) 2002-2008

Article 2 (1) (a) Ensure that all public authorities and public institutions do not engage in racial discrimination against persons or institutions.

The Charter of Public Service in a Culturally Diverse Society

Concluding observations of the CERD Committee for the previous reports welcomed the adoption of a Charter of Public Service in a Culturally Diverse Society (1998). FECCA believes that while the principles laid out are well constructed these principles are not integrated into service delivery mechanisms by all government agencies and departments. FECCA believes that the voluntary nature of the *Charter* is a barrier to adequate services for people from CALD communities, particularly those whose first language is not English.

Many CALD Australians, especially people from new and emerging communities, perceive their complaints are not taken seriously, particularly when reporting experiences of racial or religious vilification or physical assault or harassment based on a persons skin colour or cultural background. This clearly points to difficulties with the principle identified in the Charter relating to responsiveness to the needs of service users¹

FECCA Recommendations

- Mandatory reporting against the *Charter*, to embed best practice in the policies, procedures, protocols and planning of all Government departments;
- Use of the *Charter* as a tool for non-government organisation service delivery and investigation into how this might be achieved; and
- A strong focus on integrating the principles outlined in the *Charter* into accountability measures by services funded by government.

Article 4 (a) Establishing Criminal Offences Related to Racial Discrimination

States shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities

Concluding observations of the CERD committee for the previous reports included first and foremost ‘the absence of any entrenched guarantee against

¹ FECCA New and Emerging Communities Policy Statement. 2007. Available: http://www.fecca.org.au/Policies/2007/policies_2007015.pdf

racial discrimination that would override the law of the Commonwealth'². This remains an issue with the Commonwealth Government's decision not to introduce further legislation to criminalise serious racial vilification.³ In addition, legislation remains inconsistent across State governments (Appendix 1).

Civil Remedies

The Commonwealth, NSW, ACT, Victoria, Queensland, South Australia and Tasmania provide civil remedies, however litigation has proven problematic with an amendment to the *Anti-Discrimination Act*, of a 'free speech' clause that includes a defence of acting 'in the public interest'. This can make litigation counter-productive in dealing with people who would relish a public platform for further defamation without any serious penalty at the conclusion of the proceedings.⁴

Criminal Offences

Victorian law provides criminal sanctions for racial and religious incitement, under the *Racial and Religious Tolerance Act 2001*.⁵

In Western Australia racial hatred is a criminal offence, however there is no specific provision for making a complaint under civil or anti-discrimination law.⁶ In South Australia the legislation provides for both a civil wrong (tort) and a criminal offence though it is not a ground for complaint under anti discrimination legislation. The Commonwealth, Northern Territory and the other States provide no criminal sanctions for racial incitement.

FECCA is concerned over the difficulty in obtaining successful prosecutions against racial vilification. This was an issue noted in the previous report observations (item 15) and remains a current issue in 2008. Laws relating to civil remedies prescribe a lengthy procedure of complaint, investigation and conciliation before action can be taken by the complainant.

In the ACT the number of racial vilification allegations has risen substantially in the past three years⁷ and yet most complaints are unsuccessful. In NSW provision for a criminal offence of serious vilification has never been applied in practice. The elements of the offence are very difficult to prove and prosecution requires the consent of the Attorney-General, which has never been given. The

² Section C (9) available: http://www.dfat.gov.au/hr/downloads/concluding_observations.pdf

³ The reservation is in the following terms, "having legislated with respect to the subject matter of the article in matters of practical concern in the interests of the public (ordre public), the right is reserved not to introduce any further legislative provision on these matters. Cited in, Racial and religious vilification in the ACT, ACT Human Rights Office Issues Paper (2006). p.11.

⁴ Lacey, I. (2005). Legislating against religious vilification. Paper presented at Kolkata conference

⁵ Sections 24(2) and 25(2) of the Act state it is a criminal offence in Victoria to "intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule" on the ground of religion or race.

⁶ Racial and religious vilification in the ACT, ACT Human Rights Office Issues Paper (2006). p.21

⁷ Ibid.p.3

NSW provisions have been used as a model by the ACT, South Australia and Queensland, highlighting the inadequacies of current legislation in protecting human rights of victims who initiate discrimination complaints.

Religious Vilification Legislation

Currently, while the (RDA) prohibits discrimination and vilification on the ground of race, colour, descent, and national or ethnic origin, it does not prohibit discrimination or vilification on the ground of religion. This leaves a significant gap in the Commonwealth system of protection against discrimination. While religious vilification legislation has been adopted in some states⁸, the absence within Commonwealth legislation fails to protect people of Muslim faith who do not necessarily share a national or ethnic origin.

Recommendations for Reform

Observations of the previous reports noted a concern with the difficulty for complainants to establish racial discrimination in the absence of direct evidence. In the current climate of hostility towards Muslim people in Australia, and their particular vulnerability given they fall outside the protection of racial vilification legislation, FECCA recommends the enactment of legislation to prohibit discrimination and vilification on the ground of religion and to criminalise such activities. Public vilification affects the quality of life of a society which the state should seek to preserve. In this respect the very existence of appropriate laws has a salutary effect in creating a climate of opinion in which such group defamation is regarded as socially as well as legally unacceptable.⁹

A private members Bill, introduced in Federal Parliament in 2003, proposed an amendment of the Commonwealth *Crimes Act 1914* to include “Offences based on Racial and Religious Hatred”. The amendment would prohibit the intentional incitement of racial hatred and provide a penalty of one years’ imprisonment. Other provisions would protect people from threats of physical harm and threats to property on the ground of race or religion.

FECCA supports the development of a Bill of Rights, developed in consultation with the community, which is vitally important, given the absence of full protection in current domestic racial vilification legislation.

FECCA Recommendations

- That the Government enacts legislation to prohibit discrimination and vilification on the ground of religion and to criminalise such activities.
- An amendment to the Commonwealth *Crimes Act 1914* to provide improved protection for people from CALD communities throughout Australia.

⁸ South Australia, Western Australia, and ACT do not have legislation that covers religious vilification. Correspondence. Lacey [Racial and religious vilification in the ACT, ACT Human Rights Office Issues Paper (2006). p.21]

⁹ Lacey, I. (2005). Legislating against religious vilification. Paper presented at Kolkata conference.

- That the Bill be used as a model for legislation by the states and territories, or alternatively the model of the Victorian law.
- That the Commonwealth Government introduce a Bill of Rights, developed through consultation with the community to ensure that civil, political and cultural rights are protected under domestic law.

Article 4 (b) Prohibition of Organisations which Incite Racial Hatred.

The State shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.

Media’s Role in Perpetuating Racial Hatred and Discrimination

The 2005 CERD committee observations noted a concern in regards to biased treatment of asylum-seekers by the media, contravening article 4.¹⁰ Media are often reporting from government sources and mis-use of language that refer to people seeking asylum as illegal immigrants; illegals; queue jumpers, and non-legal aliens do little to discourage media stereo-typing and misrepresentation of this group of people.

Asylum seekers and ‘boat people’ are not illegal immigrants under both Australian and International Law. Their status is recognised in the UN Convention Relating to the Status of Refugees (1951) and the protocol regarding the Status of Refugees 1967, agreements to which Australia is a signatory.¹¹

Media reporting often includes images of young people, particularly young people from culturally and linguistically diverse backgrounds, as being violent or dangerous and belonging to gangs. These images contribute to strong associations that stereotypically cast youth, ethnicity and crime together. This stereotyping marginalises and contributes to the social isolation and alienation of CALD youth from mainstream society.

Cronulla Riots

Since the 2005 CERD report, prejudice against Muslim and Arab communities has increased. Many people from these communities find themselves in an increasingly intolerant environment. A report on the police response to the Cronulla ‘race riots’ implicated the media in fuelling the events. The Hazzard report noted the claims made on talkback radio and throughout the media lacked evidence, however these claims were repeated over many days to a wide audience, and fuelled the riots. In addition little was done by the government to diffuse the tension, which continues to simmer, aided by media representation of CALD people, particularly those from Middle Eastern and Arabic backgrounds.

¹⁰ United Nations (2005). Concluding observations of the Committee on the Elimination of Racial Discrimination. Item 14. Available: <http://www.dfat.gov.au/hr/treatyreport.html>

¹¹ Convention relating to the Status of Refugees. Available: http://www.unhcr.ch/html/menu3/b/o_c_ref.htm

Many people from CALD backgrounds are experiencing increasing incidents of racism and discrimination, particularly people of Islamic and Jewish faiths. Most recently negative media focusing on people from African countries is creating community fear and uncertainty and has the potential to lead to discrimination and racism.¹²

Recommendations

- Accurate representation of asylum seekers and boat people as legal immigrants by government communication services.
- Promotion of positive images of CALD youth in the media.
- Ensuring media organisations fulfil their obligation to be socially responsible, fair, accurate, thorough, comprehensive, and balanced.
- Support increased representation of CALD people on the editorial and management boards of major print and broadcast media bodies.

Article 4(c) Promotion of racial discrimination by authorities or public institutions, national or local.

Most recently simmering racial tensions are evident in the protests and racist activities surrounding the establishment of an Islamic school in Sydney's suburb of Camden with rallies organised and anti Islamic material distributed by right wing political extremists.

The distribution of anti Islamic propaganda in the form of a fake leaflet by family members of former Liberal MP Jackie Kelly was designed to fuel anti-Islamic sentiment in the electorate of Lindsay in the lead up to the 2007 elections. It is evident from these examples that racial discrimination by authorities or public institutions, as noted in article 4 (c) has not been adequately addressed by the Australian Government. These acts are also indicative of the increasing incidence of prejudice against Arabs and Muslims in Australia since the 2005 report, despite a recommendation by CERD for Australia to work towards eliminating prejudice against Arab and Muslim Australians.¹³

Recommendations

- That the Government reviews its threshold for complaints against racial and religious vilification and address the continued lack of successful convictions.
- That changes in legislation outlined in recommendations for section 4 (a) are enacted

¹² Refugee Council of Australia (February 2006). Australia's refugee and special humanitarian program: current issues and future directions. Views from the community sector

¹³United Nations (2005). Concluding observations of the Committee on the Elimination of Racial Discrimination. Item 13. Available: <http://www.dfat.gov.au/hr/treatyreport.html>

Article 5. States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.

While the Committee, as noted above, was concerned that prejudice against Arabs and Muslims has increased, such prejudice has now extended to our more recent migrants from African communities.

Statements made in 2007 by the previous Immigration Minister in regard to African refugees' inability to settle lay blame on the victim rather examining the inadequacy of settlement services. The decision by the government to drastically reduce African refugee intake from 70 per cent to 30 per cent of the total 13,000 thousand intake, was based on anecdotal and media-influenced information, rather than research-based evidence and has contributed to increased discrimination of this group through misleading comments. People, particularly from countries of Africa, report that they are vulnerable to being targeted by police, especially when young men are together in groups, either in cars, or on the streets.¹⁴ The recent events in Tamworth illustrate the effect that negative publicity and inaccurate media portrayals of refugees can have on creating racial tension within communities.

Article 5 (a) Equal Treatment Before the Law

It is fundamental to FECCA that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. It is therefore essential that the Australian security system ensure procedural guarantees and due process under the law. A lack of understanding of Australian Incorporation and Association laws, lack of appropriate and up-to-date multilingual resources, and lack of interpreters all adversely impact on achieving equality in the Australian legal system for CALD individuals and organisations, particularly those from non English speaking countries.

The need for high level literacy and English proficiency creates a barrier for many people for both CALD and Indigenous communities and there is limited availability of free legal assistance for discrimination matters.

CALD women have problems obtaining access to existing resources and structures in the Family Law system¹⁵. In particular, victims of rape and sexual assault have poor access to the judicial system with evidence of under-reporting

¹⁴ Refugee Council of Australia (February 2006). Australia's refugee and special humanitarian program: Current issues and future directions. Views from the community sector.

¹⁵ NESCI, A. (2006) Overcoming Barriers to providing domestic violence services for women from culturally and linguistically diverse backgrounds. *National Homelessness Conference*. Sydney.

of assaults.¹⁶ Family violence for CALD women is an often hidden issue that is significant within the community.¹⁷ This is compounded by a lack of cultural knowledge and sensitivity within the police and legal system regarding family and domestic violence in the CALD community.¹⁸ FECCA is concerned that the latest changes to the Family Law Act will act as a disincentive for women to seek service.¹⁹ While the intent behind changes is promoting the best interests of the children, FECCA is concerned that these changes create a barrier for CALD women in accessing protection and support, in particular women whose first language is not English and who have low levels of literacy.

Changes in the provision of evidence of violence occurring also risks non-disclosure by CALD women. If violence cannot be proved then they may be disadvantaged in their ability to access equitable, shared care arrangements for children. The fact that there is no penalty if a perpetrator denies violence and is subsequently proven guilty, raises serious equity concerns for FECCA.

Recommendations

- These factors must be addressed to ensure equitable application of the law and the fulfillment of Australia's obligations under the Convention (article 5 (a)).
- FECCA calls for provisions to be made for greater access to appropriate legal services for CALD and Indigenous Australians.

Counter-Terrorist Legislation and Civil Rights

While FECCA welcomes protection of the public and the security of Australian citizens, we are concerned that the proposed counter-terrorism legislation risks undermining community harmony and human rights. In the absence of a Bill of Rights or Human Rights Act, Australians are vulnerable to having their human, civil and political rights undermined. These rights, which are outlined in the UN Declaration of Human Rights, must be protected.

FECCA is concerned that legislation allows for detention without charge. During the period of detention, access to legal representation and advice must be freely accessible. International human rights law requires that a person who is detained must have the right to challenge this detention in a court without delay.

Arab and Muslim Communities

A concern of the CERD report 2005 was that Australia's counter-terrorism legislation may have an indirect discriminatory effect against Arab and Muslim

¹⁶ ASTBURY, J. (2006) Services for victim/survivors of sexual assault identifying needs interventions and provision of services in Australia. Australian Institute of Family Studies.

¹⁷ SUCCESS WORKS (2005a) *CALD Women's Project. Final Report*, Department of Victorian Communities.

¹⁸ Ibid.

¹⁹ FECCA Access and Equity Report. (2006).p. 17. Available: http://www.fecca.org.au/submissions/2006/Submissions_2006022.pdf

Australians.²⁰ FECCA is concerned that racial stereotyping, vilification and discrimination against this group has increased. It is an issue that has been identified in the Report of the Security Legislation Review Committee, June 2006 (Sheller Report) and in the Parliamentary Joint Committee on Intelligence and Security report *Review of Security and Counter Terrorism*.

FECCA believes that commentary by the media and government on terrorism and the use of anti-terrorism legislation have contributed to the climate of 'moral panic' that undermines social harmony.

Targeting Islamic people presents the view to the public that all Muslims are associated with terrorism, as expressed by John Laws who claimed on air that "...the majority of terrorists are Muslims....certainly they're fanatical, they're extremists, but nonetheless they are Muslims."²¹ []

It is clear that recommendations outlined in 2005 CERD report for Australia to 'increase its efforts to eliminate such prejudices and to ensure that enforcement of counter-terrorism legislation does not disproportionately impact on specific ethnic groups' remain relevant in 2008.

Article 5(d) Protection from Racial Discrimination Regarding Civil Rights

Mandatory Detention

The 2005 CERD committee observations noted a concern in regards to mandatory detention of 'illegal immigrants' and recommended a review of mandatory detention²². Australia's asylum policy that continues to process asylum seekers offshore fails to protect refugees and denies them their civil rights of equitable access to legal systems, provision for administrative and judicial review and access to trauma care and support.

FECCA welcomes initiatives by the government that work towards removing barriers to accessing civil rights for refugees and asylum seekers. The withdrawal of the Migration Amendment (Designated Unauthorised Arrivals) Bill which was discriminatory towards asylum seekers, the dismantling of the Pacific Solution and the abolishment of Temporary Protection Visas are welcomed, however we are concerned that offshore processing continues with plans to increase the offshore program on Christmas Island. FECCA believes that regardless of their process of arrival in Australia, all refugees have a right to protection and legal access.

²⁰ United Nations (2005). Concluding observations of the Committee on the Elimination of Racial Discrimination. Item 13. Available: <http://www.dfat.gov.au/hr/treatyreport.html>

²¹ John Laws, Radio 2UE Sydney. November 9, 2005.

²² United Nations (2005). Concluding observations of the Committee on the Elimination of Racial Discrimination. Item 23. Available: <http://www.dfat.gov.au/hr/treatyreport.html>

Recommendations

That all processing of asylum seekers and refugees is conducted onshore where they can exercise their civil rights to full access to legal systems, provision for administrative and judicial review and access to trauma care and support

Citizenship Test

FECCA welcomes the Government's review of the Citizenship test that discriminates against refugees, humanitarian and family reunion entrants and those who have low literacy levels. FECCA Community consultations undertaken in 2007 support government citizenship test figures that show a 20 percent failure rate for migrants who have come to Australia under the Humanitarian scheme. The current test is discriminatory against refugees, humanitarian entrants and migrants whose literacy levels are poor and who come from oral cultures.

Recommendations

It is recommended that all migrants and humanitarian entrants have equal opportunities to participate fully in the community through meaningful Australian citizenship. Alternative provisions should be made for people whose literacy levels are low or who come from oral cultures, such as refugees and humanitarian entrants. FECCA believes the present test is discriminatory and should be reconsidered on grounds of justice and equity.

5 (d) ix The Right to Freedom of Peaceful Assembly and Association

FECCA is concerned about the operation of Anti-Terrorism legislation in Australia in regards to listing of terrorist organisations. The proscription power relies on guilt by association, by imposing criminal liability on whole groups and on those who associate with them. It therefore imposes criminal liability on individuals who may have no proven or provable connection to violent acts which threaten the safety of the public. The case brought against Indian Muslim, Dr Haneef in 2007 is one such example of this. Such legislation contravenes CERD article 5 (d) ix. and places a greater restriction on the right to freedom of association than is necessary in a democratic society in maintaining national security.

Article 5(e) i. The Right to Work and Fairness in Employment.

There are still barriers to fair employment for some groups of CALD Australians, in particular, women and refugees. Access issues include training and education programs; lack of recognition of overseas qualifications, and ongoing discrimination by employers. Newly arrived migrants are at risk of being exploited and underpaid, often taking casual employment in poorly regulated industries. There is a lack of recognition of qualifications and experience gained overseas within some sectors of the workforce and an under-utilisation of bi-lingual skills that many migrants bring to the workforce.

CALD women are highly represented in unsecured and lower wage jobs. Recent changes to the Industrial Relations system have weakened the position of these women and costs of seeking justice are beyond the reach of many, particularly those affected by unfair treatment at work.

For many refugees, employment is a major challenge. Barriers include lack of English skills, lack of recognition of overseas qualifications, translation of education certificates and previous work experience, difficulty accessing work references, and discrimination from potential employers.

There have been cases where refugees have had to drop out of English classes in order to take on manual jobs which do not require English skills. For many refugees, poor English skills and lack of understanding of the Australian workplace prevent them from finding work in their chosen field.²³

Institutionalised discrimination is evident with the recent decision by Cochlear Lane Cove plant to forbid its workers from speaking non-English languages at work (October 2007). This is a clear breach of the Anti-Discrimination Act of NSW to penalise employees who speak languages other than English in their place of work²⁴. Cochlear has not shown that speaking in other languages in a tea break or a visit to the bathroom has had a negative impact on productivity or the efficient functioning of its workers.

FECCA Recommendations

- Access to bridging training to allow for equitable access to employment in their chosen vocation;
- Recognition of overseas qualifications and removal of “closed shop” practices of some professional bodies;
- The restoration of safeguards formerly available to vulnerable workers, including independent scrutiny of workplace agreements for disadvantage,
- Protection against unfair dismissal and restoration of access to the Australian Industrial Relations Commission for dispute settling purposes and the hearing of test cases on fundamental rights such as pay and work/life issues.
- Removal of constraints which impede CALD women’s political and economic contributions through mentoring and leadership programs; increasing the representation of CALD women in decision-making roles; giving greater visibility and voice to CALD women in the media, arts, and sports; and the provision of funding to organisations that specially work with CALD women.

²³ Refugee Council of Australia. *Australia’s Refugee and Humanitarian Program 2007-08*. Available: http://www.refugeecouncil.org.au/docs/resources/submissions/2007-08_intakesub.pdf

²⁴ The discrimination act of NSW states: “*It is against the law to stop you speaking in your own language at work or when you are studying at college, university and so on - unless speaking in your language stops the work or study being done properly*”.

Article 5 (e)iii. The Right to Housing

The right to housing has become a major area of concern for newly arrived migrants and refugees. Many experience direct and indirect discrimination when trying to access housing in both the private and public housing sectors on the grounds of family size, language, race and income status. .²⁵

Women who are identifiably 'different', especially Muslim women and also African refugees have been subjected to racial vilification and discrimination in accessing accommodation²⁶

The impact of the housing crisis leaves refugees and new migrants particularly vulnerable. The task of finding accommodation for new arrivals is becoming increasingly difficult with the result that refugees are being placed in accommodation by case workers, which is unaffordable and inappropriate.²⁷ In addition the lack of State Tenancy legislation that addresses minimum standards leaves people open to discrimination by property managers.

Recommendations

- That the Government ensure equitable access to public housing for people from culturally and linguistically diverse backgrounds, in particular those most at risk – refugees and humanitarian entrants and women.
- Public education to address the issue of discrimination against refugees in the private rental market.

Article 5 (e)iv. The Right to Health, Medical Care, and Social Services.

While Australia's CALD communities make up one quarter of our population, accessing timely and appropriate health and aged care services remains an issue, particularly for those people with low level English language skills, older CALD Australians, humanitarian entrants and refugees, and those in new and emerging communities that have not yet established support networks.

A lack of cultural competence across all service delivery hampers the rights of CALD Australians to equitable accessing these services. Services often do not take account of dress codes, dietary needs, prayer times, restrictions around gender mixing and other cultural or religious practices.

Within the health sector there is a misconception that cultural sensitivity is a special interest area that can be sidelined with the result that staff are routinely inadequately prepared for the realities of the situations which patients and clients

²⁵Refugee Council of Australia. *Australia's Refugee and Humanitarian Program 2007-08*. Available: http://www.refugeecouncil.org.au/docs/resources/submissions/2007-08_intakesub.pdf

²⁶ FECCA Women's Policy statement 2007. Available: http://www.fecca.org.au/Policies/2007/policies_2007005.pdf

²⁷Refugee Council of Australia. *Australia's Refugee and Humanitarian Program 2007-08*.p. 59. Available: http://www.refugeecouncil.org.au/docs/resources/submissions/2007-08_intakesub.pdf

present. This has a major impact in many areas including sensitive areas such as women's health.

Access and supply of interpreters also remain issues where language services have not kept abreast of current language needs²⁸. CALD Women face barriers to medical services due to a lack of use of interpreters, the need for health information and prevention programs in languages other than English, and the lack of culturally and language appropriate doctors, nurses, meals on wheels providers and personal carers.

Recommendations

To ensure the rights of CALD Australians are met in accessing adequate health, medical and social services, FECCA recommends a cultural competence framework to inform all entry, information and assessment points within the service system in order to minimise barriers for people from CALD backgrounds. Initiatives that build cultural awareness and cultural competence should include language services and cultural awareness and diversity training.

Article 5 (e)v. The Right to Education and Training

There is evidence to suggest that students from CALD backgrounds are experiencing racism in educational settings that are not being adequately addressed by educational authorities. In some cases, this has led to students withdrawing from school.²⁹ The situation is exacerbated by the shortage of English as a Second Language (ESL) teachers in both government and non-government schools where at least 35% of ESL students who require support do not receive it.³⁰ Due to the extra need of African refugee students ESL support is withdrawn from the general ESL students.

English language training continues to be an issue, particularly for adult temporary protection visa holders, who are unable to access English language training under the Adult Migrant English Program (AMEP). Greater flexibility in English Language Services (ELS) is called for to remove these barriers. Newly arrived migrants need to learn English, however, the waiting period for citizenship eligibility that has recently increased, and the priority of gaining an income reduces access to English tuition. In many cases these people never regain an opportunity to attend classes.

²⁸ School of Global Studies in Social Science and Planning, RMIT University. (2007). The standards of linguistic competence in English and LOTE among NAATI accredited interpreters and translators. p.94.

²⁹ FECCA (December 2006). "Access and Equity Report. Feedback from FECCA's consultation regarding access and equity issues for people from culturally and linguistically diverse backgrounds, conducted during November and December 2006

³⁰ FECCA Access and Equity Report (2006). Available:
http://www.fecca.org.au/submissions/2006/Submissions_2006022.pdf

A working knowledge of English is important to being able to participate fully in Australian life. Investment in language-learning programs is therefore critical in fostering a just and inclusive society.

Recommendations

- An effective ESL program that addresses student needs and achieves measurable learning outcomes.
- That the delivery of Adult Migrant English Programs better accommodate the diverse circumstances and needs of program participants. This is particularly relevant for refugees with a history of torture and trauma and who may have a disrupted education, or for migrants who struggle to balance work and family commitments and cannot attend the English language acquisition programs during business hours.
- That English-language programs and workforce entrance programs are more effectively coordinated to enhance outcomes

Article 6: Inadequacies of Current Legislation

In the concluding observations for previous reports the CERD committee recommended that ‘the State party refrain from adopting measures that withdraw existing guarantees of indigenous rights and that it make every effort to seek informed consent of indigenous peoples...’.

Since the 2005 reports human rights have been further eroded in this respect. Inadequacies of the RDA have been highlighted with the recent repeal of the act in 2007 in order to carry out its Northern Territory intervention in Indigenous communities. Legislation implemented in the Northern Territory (and the added proposal of extending some intervention measures into Queensland) and the repeal of the RDA breaches obligations Australia has as a signatory to the Convention on the Elimination of All Forms of Racial Discrimination (Article 1.4) and is contradictory to the abovementioned CERD recommendations.

Recommendations

FECCA calls for a review of the current legislation implemented in the Northern Territory to ensure compliance with these obligations and restoration of the RDA

Action on the ‘Stolen Generation’

In their previous concluding observations, the CERD Committee made recommendations for the State party to ‘increase its efforts with a view to ensuring that a meaningful reconciliation is achieved and accepted by the indigenous peoples and the population at large’ and ‘address appropriately the harm inflicted by the forced removal of indigenous children’.³¹ FECCA welcomes the Parliament’s formal national apology for the ‘stolen generation’ of Indigenous Australians and its show of commitment to human rights by becoming signatories

³¹ United Nations (2005). Concluding observations of the Committee on the Elimination of Racial Discrimination. Item 25. Available: <http://www.dfat.gov.au/hr/treatyreport.html>

to the UN declaration on the Rights of Indigenous People. HREOC's 'Bringing Them Home' Report³² also includes the provision that reparations be made to respond to and redress violations of human rights.

Recommendations

FECCA supports these recommendations and calls for the establishment of a reparations tribunal as recommended by the Public Interest Advocacy Service in 2001³³

³² HREOC 1997, *Bringing Them Home: The Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*.

³³ Available: <http://www.austlii.edu.au/au/other/IndigLRes/2000/1/index.html>.

Appendix 1

Table of Racial Discrimination Legislation

HREOC. Available:

http://www.humanrights.gov.au/racial_discrimination/guide_to_rda/index.html

Accessed: 11 February 2008

	Federal	NSW	QLD	VIC	SA	WA	ACT	TAS	NT
Racial Discrimination	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Religious Discrimination	No*	No**	Yes	Yes	No	Yes	Yes	Yes	Yes
Racial Vilification/Hatred	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Religious Vilification/Hatred	No	No	Yes	Yes	No	No	No	Yes	No

* HREOC can hear complaints about religious discrimination in employment.

** There is protection for ethno-religious discrimination under the NSW definition of racial discrimination.