

## Backgrounder

11 April 2014

### What is Remedy Australia?

Remedy Australia is a new human rights NGO with a very specific mandate. We focus on complaints made to the UN which committees of independent experts have determined constitute human rights violations. We monitor Australia's compliance with committee decisions concerning these violations and we advocate for the fulfilment of the right to remedy in these cases.

### What is the right to remedy?

It's a human right you may never have heard of. But it belongs to everyone, guaranteed by international law in the [Universal Declaration of Human Rights](#) and the [International Covenant on Civil and Political Rights](#) (ICCPR) as well as elsewhere.<sup>1</sup> The right to remedy goes hand-in-hand with every other human right. If your human rights are violated, you are entitled to have something done about it.

### What counts as an adequate and effective remedy?

There are two meanings of the word *remedy* in the context of human rights. A *procedural remedy* is a verdict on whether rights have been violated. A *substantive remedy* is when something is done to fix or compensate for a violation. Complaining to the United Nations is one way for victims of human rights violations to get a procedural remedy. Where a violation by Australia is found, Australia is obliged to deliver a substantive remedy. This involves:

- Acting to end any continuing violation against the complainant(s) (*cessation*)
- Restoring the person 'to the condition he or she was in before the unjust activity occurred'<sup>2</sup> (*restitution*), where that is possible and if that is what the person wishes
- Where restitution is not possible, an effective remedy means making reparations with something equivalent in value to what was lost, usually money
- Other remedial measures may be relevant, such as prosecuting perpetrators, truth-telling and recording, apology or other symbolic reparations

Remedies need to be 'adequate, effective and prompt' and 'proportional to the gravity of the violations and the harm suffered'.<sup>3</sup> An important related obligation requires the government to take steps to ensure the violation does not happen again (*non-repetition measures*).

### Why not get a procedural remedy in Australia?

The UN requires people to try all complaints procedures and legal avenues available to them in their home country (called *exhausting domestic remedies*) before complaining to the UN.

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1 Other sources include the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD article 6), the *Convention Against Torture* (CAT article 14) and the *Rome Statute of the International Criminal Court* (article 75).

2 Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2<sup>nd</sup> ed, 2005) 10–11.

3 The UN's 'Van Boven Principles' on the right to remedy (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>).

But it can be hard to test allegations of human rights violations in Australia. While Australia has ratified most international human rights treaties, most of the rights contained in them have not been written into Australian law.

Australia is obliged by its international legal commitments to establish ‘appropriate judicial and administrative mechanisms for addressing claims of rights violations ... promptly, thoroughly and effectively through independent and impartial bodies.’<sup>4</sup> The UN Human Rights Committee has criticised Australia for inadequate general mechanisms for testing allegations of human rights violations.<sup>5</sup>

### **So people have complained to the United Nations?**

Since 1980, Australia has been ‘a party to’ the ICCPR, which means it has ratified this important human rights treaty and is legally bound to uphold it and to ensure that ‘any person whose rights ... are violated shall have an effective remedy’.<sup>6</sup>

Since the first individual complaint (known as a *communication*) against Australia was concluded in 1994, the UN has found Australia in breach of the ICCPR and other human rights treaties a total of 33 times. Some of these are well known, like that first case, called [\*Toonen v Australia\*](#). But most have disappeared without trace. Most of the victims involved (known as *authors*) have not received any remedy, even though the UN has upheld their complaint, found Australia in breach of international law and determined an appropriate remedy. To date, only 18% of these complaints upheld by the United Nations’ top human rights experts have been fully remedied. Remedy Australia aims to change this.

### **What does Remedy Australia do?**

Remedy Australia promotes the right to an effective remedy by:

- Publicising UN committee decisions concerning human rights violations by Australia
- Monitoring progress in implementing effective remedies for these violations
- Supporting the UN committees with independent information on Australian cases
- Advocating for effective remedial action as determined by the UN Committee, including remedies for affected individuals and measures designed to prevent the violation recurring
- Developing and advocating for an effective and transparent national mechanism for receiving, considering and giving effect to past and future UN views concerning violations by Australia
- Advocating for Australia to ratify further UN human rights complaint mechanisms as they become available
- Mobilising public support for this advocacy.

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4 Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.1326 (29 March 2004) [15].

5 eg *A v Australia* (1997), *Faure v Australia* (2005), *Shams et al v Australia* (2007).

6 ICCPR article 2(3)(a).