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The Secretariat
National Human Rights Action Plan
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
By email: nhrap@ag.gov.au.

Dear Secretariat,

National Human Rights Action Plan Background Paper: Comments by Australian Lawyers for Human Rights

Please find attached comments by Australian Lawyers for Human Rights for consideration by the Attorney – General's Department.

These comments are provided pursuant to the invitation by your Department in the National Human Rights Action Plan Background Paper.

We look forward to the opportunity to further consult with your Department throughout the development of Australia's National Human Rights Action Plan.

Kind Regards,

Stephen Keim SC,
President
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18 February 2011
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Submission to the Attorney-General's Department's National Human Rights Action Plan Background Paper

Introduction

1. Australian Lawyers for Human Rights (**ALHR**) welcomes the opportunity to comment on the Attorney General's Department (**the Department**) National Human Rights Action Plan Background Paper (**the Background Paper**). This submission comments on the approach and process outlined by the Department in its Background Paper and sets out our initial views on potential actions for inclusion in the National Human Rights Action Plan (**Action Plan**).
2. ALHR supports the vast majority of the content of the Background Paper, but considers the Action Plan could do better. The following comments are intended to strengthen the actions outlined by the Department in order to ensure that Australia ultimately produces a quality Action Plan responsive to the needs and deficiencies in human rights protection in Australia. Our remarks are based on seventeen years experience of making submissions to Parliamentary inquiries on a wide range of human rights issues in our capacity as an interested and involved voluntary organisation.

About ALHR

3. ALHR was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).
4. ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1700 lawyers, with active National, State and Territory committees.
5. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

Endorsement of the Human Rights Law Resource Centre submission

6. ALHR supports and endorses the comprehensive submission on the National Human Rights Action Plan provided by the Human Rights Law Resource Centre (**HRLRC**) on 17 February 2011. We consider the HRLRC to have addressed the key issues relating to the National Human Rights Action Plan and give support to the recommendations put forward by the HRLRC. Our submission is intended to supplement and reinforce the HRLRC submission.
7. ALHR agrees with the HRLRC that the National Human Rights Action Plan should provide concrete, enforceable measures to ensure improvements in the following areas:
 - a. constitutional and legislative framework for protecting human rights;
 - b. immigration law, policy and practice;
 - c. Aboriginal and Torres Strait Islander peoples;
 - d. torture and ill-treatment;
 - e. counter-terrorism;
 - f. mental health care;
 - g. children's rights;
 - h. housing and homelessness;
 - i. police;
 - j. equality and non-discrimination;
 - k. women's rights;
 - l. business and human rights;
 - m. people with disabilities;
 - n. sexual and gender identity;

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 - l. business and human rights;
 - m. people with disabilities;
 - n. sexual and gender identity;

- o. culturally and linguistically diverse communities;
- p. access to Justice;
- q. poverty;
- r. prisoners and prison conditions; and
- s. Australia's extra-territorial obligations.

Support for the National Human Rights Action Plan

8. ALHR believes that Australia's current protection of human rights is piecemeal and inadequate. ALHR is of the view that the development of a National Human Rights Action Plan is an important step in promoting and improving human rights protection in Australia.
9. ALHR is disappointed, however, in the Government's decision not to legislate for a comprehensive enforcement of human rights consistent with Australia's international obligations in that regard through the introduction of a Human Rights Act, and recommends that the Government reconsider its position on this matter.
10. ALHR supports the Australian government's most recent commitment at Australia's 2011 Universal Periodic Review ('UPR') to use the UPR recommendations accepted by Australia to inform the development of Australia's Action Plan.¹ ALHR was also encouraged to see the strong support by nation states at the UPR of Australia's development of a National Human Rights Action Plan.² ALHR recommends that the Department be guided by the issues raised at the UPR, as well as issues raised (on some subjects, on more than one occasion) in other UN treaty body reports and the reports of Special Procedures, in the development of its Action Plan.
11. ALHR supports the Department's decision to build on, rather than duplicate, its work undertaken as part of the 2009 *National Human Rights Consultation*. In this respect, ALHR hopes that the Department will invite those who heavily participated in the 2009 Consultation process to contribute towards this current consultation, in order to benefit from their knowledge and experiences.
12. ALHR supports the Department's indication that it will follow the best practices of other state's National Human Rights Action Plans, including New Zealand and Sweden. ALHR recommends the Department initiate a dialogue with these countries to obtain direct guidance (or involvement) from those who drafted their respective country's Action Plans. The Department may also benefit from hosting

¹ See the United Nations Human Rights Council, 'Draft report of the Working Group on the Universal Periodic Review: Australia', A/HRC.WG.6/10/L.8, at p 12 (Available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf).

² See the United Nations Human Rights Council, 'Draft report of the Working Group on the Universal Periodic Review: Australia', A/HRC.WG.6/10/L.8, (Available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf).

an international workshop with key government and civil society players from Australia, Sweden and New Zealand attending.

13. ALHR supports the Action Plan's initiative not to duplicate the objectives and monitoring arrangements of existing programs across Australia. However, ALHR is of the view that there is utility in the Action Plan 'reformulating' existing programs to the extent that this consultation process can improve and better utilise these programs. ALHR hopes that the government will therefore be minded to discuss reform of existing programs with participants throughout the consultation process.
14. The Action Plan should focus on a manageable number of issues, in line with the approaches adopted by countries like New Zealand and Sweden. However, ALHR is of the view that this limited number of issues should be decided based on careful analysis of where Australia most needs to improve its human rights performance. In this regard, ALHR welcomes the Department's assurance that it will focus on the spectrum of civil, political, economic, social and cultural rights when determining the Plan's outcomes and priority actions.

Support for the Baseline Study

15. ALHR supports the preparation of a baseline study setting out the existing human rights context in Australia. The preparation of a Baseline study is in line with the *UN Handbook on National Human Rights Plans of Action* (UN Handbook) and is an important way in which the government can ensure its action-oriented Action Plan is apt for Australia. Indeed it would be difficult to imagine an effective Action Plan that did not first take stock of Australia's current human rights situation.
16. ALHR welcomes the government's indication of the range of material it will draw on in compiling the baseline study. In developing the Baseline Study, the Department should utilise the excellent range of material recently produced for Australia's January 2011 Universal Periodic Review as well as the results of other UN treaty body reports and the reports of UN Special Procedures.

Governance

17. ALHR supports the Commonwealth Attorney-General overseeing this project. ALHR notes that the Background Paper states that "a committee of senior officials from all relevant Australian Government department will steer the project". While the government, through the Department, will necessarily take the dominant role in steering this project, the steering committee should also include a significant amount of civil society representatives in the project's governance, in order to ensure the project is inclusive and fully informed throughout its development. A steering committee consisting only of government officials would risk the process becoming alienated from the community and key community organisations.

18. Civil society representation also aligns with the UN Handbook's recommendation that "[t]he first major step in the process is the establishment of the national coordinating committee" in which civil society represents approximately 50 per cent of participants.³ The UN Handbook recommends the governing committee include representatives from various sectors including vulnerable groups, various sectors of the community, trade unions, business, human rights educators, the judiciary, parliamentarians, major NGOs and representatives from National Human Rights Institutions, and from various government agencies.
19. Within the coordinating committee, the UN Handbook recommends that sectoral working groups consisting of civil society be established to address specific themes of the Action Plan. ALHR views these sectoral working groups as an important way in which the Action Plan can draw upon a wider range of expertise. In this respect, NGOs participating in the sectoral working groups can take the opportunity to canvass views of their members, further enhancing the inclusiveness and effectiveness of the Action Plan process.

Potential Actions for Inclusion

20. ALHR supports the Department's inclusive approach to developing an Action Plan, which will be guided by the UN Handbook and include consultation with broad sectors of society, including NGOs. It is only through including a broad spectrum of participants that the plans of action and outcomes will be truly responsive to Australia's human rights needs.
21. As has been mentioned above,⁴ ALHR supports the need for the Action Plan to pursue concrete enforceable measures across the range of identified areas as set out in HRLRC's submission. In addition, ALHR encourages the Department to undertake a national media campaign to raise awareness of the Action Plan throughout Australia.
22. In this respect, ALHR notes that the government's development of previous Action Plans lacked a strong media campaign aspect.⁵ ALHR encourages the Department to undertake a national media campaign to raise awareness of the Action Plan throughout Australia. Promoting participation in the development of the Action Plan on national TV, in print media and on social networking sites, for example, will encourage a broad spectrum of the public to contribute to the development of the Action Plan. Further, and as noted in the Background Paper, the 2009 *National Human Rights Consultation* was particularly successful in its inclusiveness, with media focus contributing to the near 35,000 submissions received by the government. Whilst a media campaign may add significant costs to the

³ See the Office of the High Commissioner for Human Rights, "Professional Training Series No. 10: Handbook on National Human Rights Plans of Action" (2002) at p 57 (available at <http://www.ohchr.org/Documents/Publications/training10en.pdf>).

⁴ Paragraph 7 of this submission.

⁵ See the Office of the High Commissioner for Human Rights, "Professional Training Series No. 10: Handbook on National Human Rights Plans of Action" (2002) at p 24 (available at <http://www.ohchr.org/Documents/Publications/training10en.pdf>).

development of the Action Plan, this cost is easily outweighed by the benefit of mass inclusion. The alternative, a "low profile" Action Plan process would suggest that the government was not really committed to or identified with the process.

23. ALHR also endorses the suggested approaches outlined in the UN Handbook, which include

regular informal and personal and telecommunication contacts among the main players to promote better cooperation and a harmonious atmosphere for collaboration. They can also include an interactive web site, public meetings, public hearings, provision for written submissions and use of talkback radio.⁶

Conclusion

24. ALHR wishes to thank you again for the opportunity to comment on the Department's Background Paper. ALHR is of the view that the Action Plan is an important step towards improving human rights standards and performance in Australia. We are encouraged by the Department's thorough approach towards developing this Action Plan. As we have indicated (and as is more fully explored in the HRLRC submission which we endorse) ALHR considers that the Action Plan could be improved to better protect human rights in Australia.

25. ALHR intends to contribute to the development of the Action Plan at the 2nd NGO Forum in July 2011, and at various stages during the development process. ALHR would also like to be included in the National Human Rights Action Plan mailing list.

Best regards,



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22 February 2011

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⁶ See the Office of the High Commissioner for Human Rights, "Professional Training Series No. 10: Handbook on National Human Rights Plans of Action" (2002) at p 56 (available at <http://www.ohchr.org/Documents/Publications/training10en.pdf>).

