



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

PO Box A147
Sydney South
NSW 1235
DX 585 Sydney
alhr@alhr.asn.au
www.alhr.asn.au

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 Sir/Madam

Submission to the Attorney-General's Department's Exposure Draft National Human Rights Action Plan

Introduction

1. Australian Lawyers for Human Rights (**ALHR**) welcomes the opportunity to comment on the Attorney General's Department (**the Department**) Exposure Draft National Human Rights Action Plan (**Exposure Draft**). ALHR has made several submissions in response to the implementation of Australia's Universal Periodic Review (**UPR**) recommendations.¹ Central to each response has been the repeated call for Australia's National Human Rights Action Plan (**NHRAP**) to contain 'specific, measurable and achievable goals with clear timelines in which to achieve practical actions.'²

¹ ALHR, *Response to Draft Baseline Study*, September 2011 at: <http://www.ag.gov.au/Documents/HRPB%20-%20NHRAP%20-%20Baseline%20Study%20-%20Submission%20-%20ALHR%20WA.PDF> (accessed on 19 February 2012).

² ALHR, *Response to Draft Baseline Study*, September 2011 at paragraph 14 at: <http://www.ag.gov.au/Documents/HRPB%20-%20NHRAP%20-%20Baseline%20Study%20-%20Submission%20-%20ALHR%20WA.PDF> (accessed on 12 February 2012); NGO Coalition, *Consultation on UPR Recommendations*, March 2011 at 3 at: <http://www.hrlc.org.au/files/NGO-Coalition-Submission-Consultation-on-UPR-recommendations.pdf> (accessed on 12 February 2012).

2. ALHR welcomes the Australian Government's commitment to implement the UPR recommendations accepted by Australia through the NHRAP.³ ALHR was also encouraged to see the strong support by nation states at the UPR of Australia's development of a NHRAP.⁴ ALHR reiterates its disappointment, however, that the Government rejected UPR recommendations relating to the establishment of a Human Rights Act,⁵ reparations for Stolen Generations and compensation for Stolen Wages,⁶ same-sex marriage,⁷ the abolition of mandatory detention,⁸ and the equal access to and protection by irregular migrants under Australian law.⁹
3. While welcoming the Exposure Draft and the opportunity to comment on the Exposure Draft, ALHR is disappointed that it mainly focuses upon existing activities. It also largely lacks specific indicators, measures and timeframes; many indicators are described as 'ongoing'. We view this as a missed opportunity to highlight the Government's concrete commitment to improving the promotion and protection of human rights. We also note there are gaps in implementing some UPR recommendations, as discussed below.
4. ALHR acknowledges that the Australian Government is reliant upon working with State and Territory governments to implement the NHRAP. ALHR notes that while the Victorian Government is mentioned, there are few specific references to other State and Territory government actions. ALHR expresses its disappointment at what appears to be a lack of commitment to human rights by the other States and Territories and notes it has written to these other States and Territories calling on them to immediately commit to the NHRAP.
5. ALHR welcomes the Governments proposed Action 220 to establish a joint Government and NGO Advisory Group to provide advice on improving measurement of progress on human rights in Australia, primarily focused on the collection and interpretation of data. ALHR encourages the Australian Government to further this by providing a more specific and measureable action together with proposed timelines for the joint NGO and Advisory Group in the final NHRAP.
6. Overall ALHR believes that the Exposure Draft is a good start, but considers the Exposure Draft must be more comprehensive in order to better protect human rights in Australia. The following comments are intended to strengthen the current Exposure Draft to assist

³ Hon Robert McClelland MP, Address to the NGO Forum on Human Rights, Canberra, 22 June 2011 at: http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/Speeches_2011_SecondQuarter_22June2011-AddresstotheNon-GovernmentOrganisationsForumonHumanRights (accessed on 26 August 2011).

⁴ 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) 2011 at http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf (accessed on 2 September).

⁵ Recommendation 22, *Australia's Report of the Working Group on the UPR* (Addendum) (A/HRC/17/10/Add.1) at <http://www.hrc.org.au/files/Australias-Formal-UPR-Response.pdf> (accessed on 2 September 2011).

⁶ Recommendation 97, *Ibid.*

⁷ Recommendation 70, *Ibid.*

⁸ Recommendations 126, 132, *Ibid.*

⁹ Recommendation 133, *Ibid.*

the Department in producing a Plan of Action that is responsive to the many human rights needs in Australia. Our remarks are based on eighteen years' involvement in human rights issues in Australia, including 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

7. ALHR was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).
8. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national membership of over 2000 people, with active National, State and Territory committees.
9. 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.

Chapter 1: Protection and promotion of human rights in Australia

Improving data collection and analysis

10. ALHR welcomes the Australian Government's commitment to establishing an advisory group to provide advice on matters related to the collection and interpretation of data and other information, with the aim of improving measurement of progress on human rights in Australia. In this regard, ALHR emphasises the importance of identifying the gaps in the relevant data and taking steps to collect and publish missing data. ALHR further notes the importance of effectively using existing data collected by NGOs and other bodies in the course of this exercise.

Australia's international human rights commitments

11. ALHR welcomes the Government's commitment to ratifying the Optional Protocol to the Convention against Torture, and is pleased to note the detailed steps by which this is proposed to occur.
12. ALHR is further pleased to note the Australian Government's commitment to reviewing its reservations to a number of international human rights instruments. However, ALHR is disappointed that no such commitment has been made to review the Government's reservations to Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, or the International Covenant on the Protection of all Migrant Workers and Members of their Families.
13. ALHR is of the view that the NHRAP should include commitment on behalf of the Government to regularly review any relevant treaties or covenants to which Australia is not a party. The Government has a real opportunity to demonstrate leadership in the

area of human rights by ratifying these instruments, as well as withdrawing reservations previously made.

14. ALHR is also of the view that the Australian Government should commit not merely to 'reviewing its position' on the Convention for the Protection of All Persons from Enforced Disappearance and International Labour Organisation Convention No. 169, but ratifying these Conventions, as it was urged to do by UPR recommendations.¹⁰
15. ALHR notes with concern the omission from the NHRAP of any reference to the International Convention on the Rights of Migrant Workers, which the Australian Government was also urged to ratify during the UPR process.¹¹
16. In relation to the Government's commitment to increase aid to 0.5% of the Gross National Income, ALHR emphasises the importance of implementing a human rights-based approach to Australia's aid program, and the importance of undertaking human rights assessments to inform the design, implementation, monitoring and evaluation of its development programs.

Legal Protections

17. While welcoming the Government's undertakings to ensure that the Australian Human Rights Commission is empowered and funded to resolve complaints of discrimination, and is funded to continue its community education program, and to support participation of people with disabilities and Indigenous persons in international forums, ALHR notes with concern the absence of any other specific provision of funds for the Commission's other functions and activities, despite recommendations to this effect.¹² ALHR emphasises the importance of the Australian Human Rights Commission being sustainably funded in order to be able to properly conduct its functions and activities.
18. In relation to the Government's commitment to developing legislation which will consolidate Commonwealth anti-discrimination laws, ALHR notes the integral contribution of relevant stakeholders in the legislative development of human rights. ALHR considers that the NHRAP ought to include reference to this consolidation process occurring by way of meaningful and ongoing consultation.

Australia's Human Rights Framework

19. ALHR welcomes the Government's commitment to providing funding to NGOs for development and delivery of community education and engagement programs to promote a greater understanding of human rights. However, ALHR considers it important that the NHRAP include further detail as to the criteria by which such NGOs will be chosen for receipt of such funds.

¹⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/17/10 (24 March 2011) recommendations 6-9 and 11-12.

¹¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/17/10 (24 March 2011) recommendations 9-10.

¹² Concluding Observations of the Committee against Torture, Australia, 40th sess, UN Doc CRC/C/AUS/CO/3 (22 May 2008); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia, 42 sess, UN Doc E/C.12/AUS/CO/4 (12 June 2009).

20. Further, while ALHR welcomes the Government's commitment to enhancing support for human rights education in primary and secondary schools and in the public sector, ALHR is of the view that the NHRAP ought also refer to the need to improve human rights training and education in universities and for law enforcement personnel.¹³

Chapter 2: Human rights concerns of the general community

Access to Justice

21. ALHR supports the proposed action 26 to build a stronger evidence base for the civil justice system to assist with ensuring compliance with the objectives identified in the Strategic Framework for Access to Justice in the Federal Civil Justice System (SFATJ)¹⁴, and to inform future access to justice policy and program decisions.

22. However, ALHR considers it important that such action is not merely limited to building a stronger evidence base. That is, the SFATJ identified and made a number of recommendations with respect to areas that need to be addressed so as to provide an effective strategic framework for access to justice. In line with the SFATJ's recommendations, ALHR submits that the Government must also commit to developing:

- a best practice protocol for the provision of legal information, assistance or referral;
- strategies for increasing accessibility of legal information and services amongst groups (including Indigenous communities) that may not be reached by more general programs (such as, and including, legal aid), and for the provision of information to marginalised and remote communities (including through direct contact, and building outreach services to connect existing services);
- strategies¹⁵ to access government information and services for culturally and linguistically diverse communities;
- a flexible scheme for regular review of primary legislation to ensure it remains relevant, clear and effective
- with the Courts, means by which claims of self-represented litigants can be listed for early merits evaluation, and consideration as to whether parties should be referred for external assistance (such as court-facilitated assistance, community legal centre assistance, pro bono assistance, or legal aid);
- and improving the quality of primary decision-making to improve access to justice outcomes and reduce costs associated with unnecessary or prolonged disputes;
- and ensuring lawyers are equipped (including by introducing ADR as part of legal coursework) with skills to assist clients through ADR and dispute resolution processes, and that they have access to clinical legal education and pro bono (including diverse community) opportunities.

¹³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, UN Doc A/HRC/17/10 (24 March 2011) recommendations 57, 58 and 96.

¹⁴ The overarching objective of which is to provide a strategic framework for access to justice.

¹⁵ In light of the Commonwealth Ombudsman's recommendations to enhance access to interpreters.

23. In relation to action 27, ALHR agrees it is important to implement the National Partnership on Legal Assistance Services to facilitate reform in the legal assistance sector, and to provide access to justice for disadvantaged Australians through the delivery of legal assistance services.
24. ALHR considers the action 28 Access to Justice Website to be an important initiative and submits that it is imperative that the facilitators and contributors to that website are adequately funded and well-resourced so that information and resources can be regularly updated.
25. Whilst ALHR supports the Government's proposed action 29 actions, it submits that the Government must ensure that such actions are supported by systems which are adequately funded and well-resourced in order to ensure that parties have effective and appropriate access to justice (including, for instance, culturally appropriate ADR forums and culturally sensitive and aware conciliators and mediators, etc). ALHR notes that, for many in our population (including Indigenous Australians, victims of domestic violence, the mentally ill, homeless, and those from culturally or linguistically diverse backgrounds), it is important to resolve disputes early by non-interventionist means which are culturally sensitive and do not involve litigation.
26. ALHR calls on the Government to implement, as part of its proposed action 29 action, the SFATJ recommendation that the Attorney-General's Department should work with relevant departments and agencies to ensure that opportunities to expand ADR services are considered for a diverse range of disputants, including for Indigenous disputes and for self-represented litigants.
27. ALHR supports the proposed action 30 and submits that the Government should commit to increase its level of funding to Australian universities in order that all Australian law schools can establish dedicated 'Director of Public Interest Law' (or similar) positions with responsibility for establishing and overseeing public interest law programs at their respective university.
28. ALHR supports the proposed action 31 and notes that the introduction of similar processes in other Australian States and Territories should be considered. ALHR further submits that funding should be increased to enable the introduction of specialist support services at all Magistrates Court sites.
29. ALHR considers bail support programs to be important initiatives and supports the proposed action 32. However, it has concerns relating to the ineffectiveness and lack of ability to access the existing Victorian CREDIT/Bail support program as a result of inadequate funding. That is, inadequate funding has left individuals who would otherwise benefit from support offered by the Victorian CREDIT/Bail support program (including young drug users - who the 'Court Referral and Evaluation for Drug Intervention and Treatment' is intended to support), without access to it.¹⁶

¹⁶ See, for example, Whitney Harris, "Drug addict refused Bendigo bail program", Bendigo Advertiser, 3 September 2011.

30. Further, ALHR notes that in order to be appropriately responsive and effective, and in line with suggested good practice, bail support programs must:¹⁷

- attract voluntary participation;
- provide support and intervention rather than strictly supervision or monitoring;
- be holistic in approach (which means adopting a broad needs assessment and response, providing information, and providing support and intervention when required);
- be coordinated and interdepartmental to provide access to pathways across different service systems; and
- be adaptable and responsive to local conditions.

31. ALHR recommends introducing bail support programs into all Australian States and Territories as an important and necessary means of rehabilitative support. However, it submits that they must not be introduced with haste and must be adequately funded and well-resourced to meet the needs and attract participation from the individuals who most need its support. Bail support programs must be developed with suggested best practice in mind and must be tailored to meet the needs of those communities which they will primarily service. (For instance, by offering specialist cultural and linguistic services in Indigenous areas and around communities where there are particularly high concentrations of certain nationalities / races (such as Cabramatta), etc).

32. ALHR submits that comprehensive communication strategies must be developed to promote the CREDIT/Bail support program to those who may be eligible to access it, to lawyers (including community lawyers), and to Magistrates. Discussions should also be held with the Magistrates' Court (or its equivalent) in each State and Territory regarding the introduction legislation to support introducing an equivalent of the Victorian CREDIT/Bail program in each Australian State and Territory.

33. In relation to action 33, ALHR considers the Criminal Justice Diversion Program (CJDP) to be an important Victorian initiative which assists with preventing the entry of first time or low risk defendants into the criminal justice system. Accordingly, it supports the Victorian Government's continued support of the CJDP. However, it submits that such continued support must have continued regard to the recommendations made by the Turning Point Alcohol and Drug Centre in its 2004 Court Evaluation Program Report Final Report¹⁸, which included:

¹⁷ See, for example, Gabrielle Denning-Cotter, "Bail support in Australia", Indigenous Justice Clearing House, Brief 2, April 2008.

¹⁸ See, for instance, http://www.justice.vic.gov.au/resources/2/3/23511700463fa8cc82a2972f1ffeedc1/court_diversion_program_evaluation_overview_and_final_report.pdf.

- analysis and consultation regarding potential duplication between Police Cautioning and CJD and, if necessary, development of options for addressing duplication
 - evaluating whether measures to raise awareness about the CJD are sufficient to ensure access for defendants without legal aid representation; and
 - evaluating whether there are unmet needs and whether and how meeting those needs would improve effectiveness of the drug court (such as increased access to detox facilities, weekend services, dual diagnosis practitioners, psychologists or psychiatrists, counsellor support, recreational services and day programs).
34. In relation to action 34, ALHR supports the Victorian Government's proposed action to continue providing programs to support offenders with special circumstances or complex needs through programs integrated at certain Magistrates' Court sites.
35. ALHR submits, however, that providing such programs at three Magistrates Court sites in Victorian alone is insufficient to meet the needs of offenders with special circumstances or complex needs throughout Victoria. Such individuals are already likely to have complex social issues (including the inability to access transport). Accordingly, ALHR submits that the proposed action must include increased funding to provide support programs for special circumstances of complex needs offenders throughout Victoria, including in key metropolitan and regional centres such as Ballarat, Bendigo, Colac, Geelong, Gippsland, Horsham, Morwell, Shepparton, Stawell, Warrnambool and Wodonga.
36. ALHR considers the Neighbourhood Justice Centre (**NJC**) to be an important Victorian facility. It provides a model for access to justice that could be replicated, with adequate funding and resources, in all Australian States and Territories. The proposed action 35 should include an ongoing commitment to fund the NJC beyond June 2013.
37. ALHR considers, in relation to action 36, the *Victims' Charter Act 2006 (Vic)* (**VCA**) to be an important piece of legislation as it crystallises, in Victoria, principles which guide how the criminal justice system and victim support agencies respond to victims of crime. The VCA constituted an important step towards promoting familiarity with, and the respect and protection of human rights in Victoria, by setting out principles which criminal justice agencies must follow in their dealings with victims of crime, and for providing a complaint avenue if such principles are not followed. Whilst ALHR agrees it is important to regularly monitor the effectiveness of legislation, it submits that the protections provided by the VCA must not be weakened nor the legislation repealed as a result of the monitoring process.

Counter-terrorism

38. ALHR considers the establishment of an ongoing Independent National Security Legislation Monitor, outlined in action 37, to be a positive development. Nevertheless, ALHR submits that the Government must ensure that counter-terrorism laws do not unduly impinge on those fundamental rights and freedoms to which the general community is entitled under international human rights law.

39. For instance, ALHR holds grave concerns about the application of closed justice in the context of Australian Security Intelligence Organisation (**ASIO**) assessments, including the treatment of asylum seekers during that process and their inability to challenge ASIO assessments under existing counterterrorism legislation. ALHR is also concerned that Australia's counterterrorism laws appear to have had disproportionate effects on Muslim, Tamil, Kurdish and Somali communities.¹⁹
40. ALHR submits that Australia must review and amend existing counter-terrorism laws and practices to ensure they are consistent with international human rights obligations and standards.

The use of force by police

41. ALHR supports proposed actions 38 and 39, but submits that the Commonwealth Ombudsman and Law Enforcement Integrity Commissioner must not only be adequately resourced to receive complaints, but also to investigate them and to make and report formal findings and recommendations.
42. ALHR also supports proposed action 40. ALHR submits that the Australian Institute of Criminology must be adequately funded and resourced so that it can produce meaningful and practically useful reports, and whose recommendations are capable of effective practical implementation.
43. In relation to action 41, ALHR adopts the Human Rights Law Centre's position (which has also been the long-standing position of the Federation of Community Legal Centres Victoria²⁰) that the use of TASERS raises significant human rights considerations, and that they "are potentially deadly and dangerous weapons and must be treated as such."²¹
44. ALHR supports the design, development and introduction of the NHRAP action 42 recommended "best practice" principles / oversight process for ensuring accountability with respect to deaths resulting from the use of force by police members during the course of their duties.²² It supports the design, development and introduction of such principles and processes not only in Victoria, but for all Australian States and Territories.

¹⁹ So far as ALHR is aware (and correct as of July 2010), all prosecutions under Australian counterterrorism legislation have been against Muslim and Tamil peoples. Further, all except one of the 18 organisations currently listed as terrorist organisations are self-identified Islamic organisations. See, for instance, Australian Government, Australian National Security, *What Governments are Doing – Listing of Terrorist Organisations*, <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument>, as at 14 February 2012.

²⁰ See "Taser Trap - Is Victoria falling for it?", Federation of Community Legal Centres Victoria, http://www.fclc.org.au/cb_pages/taser_trap.php.

²¹ See, for instance, Human Rights Law Resource Centre Bulletin No. 55, November 2010. See also "Taser Expansion May Harm the Vulnerable", Human Rights Law Centre, 25 February 2010.

²² See below n. 72, 120.

People Trafficking

45. ALHR supports the Government's commitment to supporting victims of trafficking regardless of the purpose for which they were trafficked. However, it submits that the proposed action 43 to support victims "initially, whether they are willing or able to assist in the criminal justice process" [Emphasis added.], does not go far enough.
46. That is, given the likely mental state and vulnerability of trafficked persons, it is not enough to commit to assisting victims of trafficking *initially*, only when they are willing or able to assist in the criminal justice process. Support to victims of trafficking must be ongoing and regardless of whether they are initially willing or able to assist in the criminal justice process. Such support must also include such things as:
- the availability of permanent residency visas and recovery services for all trafficked persons;
 - the attachment of rights to visas for trafficked person, including access to Medicare and workers' rights;
 - the ability for dependents of trafficked persons (such as children and spouses) to access appropriate humanitarian visas;
 - improvements in access to justice for victims of trafficking, including court protections and access to compensation.
47. ALHR supports action 44 but calls for the extension of funding to a range of Australian organisations which have been specifically set up and with the expertise to support and assist trafficking victims (such as Project Respect, Project Futures, and Anti-Slavery Australia).
48. ALHR also encourages the allocation of specific funding by the Federal Government for the production of targeted, up-to-date community education materials which are accessible to trafficking victims and which lists all relevant support and law enforcement agencies.
49. ALHR supports proposed action 45 but respectfully reminds the Australian Government that it signed and ratified the UN Convention Against Transnational Organised Crime (**Trafficking Convention**) and the supplementary 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children' (the **Protocol**). In delivering proposed action 45 the Australian Government must adhere to its international obligations under both the Convention and Protocol.
50. ALHR supports proposed action 46 and notes its concern that as at November 2010, only nine people had been convicted of people trafficking offences under the Criminal Code Act 1995 (Cth) (**Commonwealth Criminal Code**), including five convictions for slavery offences, three convictions for sexual servitude offences, and one conviction for

trafficking in persons for sexual servitude with deceptive recruitment.²³ In ALHR's view, this low number of convictions raises concern given that independent records and reports have, for a prolonged period of time, shown that the extent of trafficking offences in Australia is much more extensive.²⁴ For instance, in 2009 Project Respect documented approximately 110 cases of sex trafficked women in Victoria alone.

51. ALHR reminds the Government that a failure to respond adequately to trafficking charges and to provide a right of recourse before an appropriate national authority violates certain protections guaranteed by international human rights conventions to which the Government is a party. This includes the Trafficking Convention, the Protocol, and Article 2 of the ICCPR.
52. In relation to proposed action 47, ALHR reminds the Government that "trafficking" is defined by the Protocol as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, or fraud, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
53. By ratifying the Protocol, the Government has committed towards criminalising trafficking, providing witness protection, providing special assistance to trafficked persons, and preventing re-victimisation.
54. Further, ALHR notes that under the Trafficking Convention and Protocol, "exploitation" requires, at a minimum, the "exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Accordingly, ALHR notes there is nothing in this definition which limits the type of deception required. The Government must bear this in mind when considering perceived gaps in the Commonwealth Criminal Code, including the lack of specified labour and exploitation offences.
55. ALHR also reminds the Government of the Concluding Observations made by the United Nations (UN) Committee on Economic, Social and Cultural Rights in 2009 regarding Australia's economic, social and cultural human rights performance, which encouraged the Government to further "continue its efforts to combat trafficking of human beings"

²³ See 'National Report - Australia', published by the Australian Government in November 2010 for the UN Universal Periodic Review, at paragraph 108.

²⁴ For instance, in 1995, the then head of the Australian Federal Police's (AFP's) investigation unit into sex trafficking, Chris Payne, estimated that up to 500 trafficked women were working under illegal sexual servitude in Sydney at any given time. Further, in 1999, Senator Ian Macdonald confirmed during the second reading speech for the *Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999* (Cth) that "intelligence from Australian and overseas sources confirms that the problem is a significant one for Australia", and that at that time the AFP had received information regarding 14 cases of sex trafficking over the past 18 months, and that the National Crime Authority was aware that 25 women had been trafficked to Australia between 1992 and 1996. This included a 13 year old girl taken to Australia to pay off her father's debt by way of prostitution. (See Carrington, K Dr and Hearn, Jane, 'Current Issues Brief no. 28 2002-03 - Trafficking and the Sex Industry: from Impunity to Protection', Parliament of Australia Parliamentary Library, 13 May 2003; Sullivan, M and Jeffreys, S, 'Legislation: The Australian Experience', *Violence Against Women*, vol. 8, no. 9, 2002, at p 1145).

and recommended the adoption of a “national strategy from a human rights perspective, to combat the trafficking of human beings and address the exploitation resulting from this practice.”

56. ALHR supports proposed action 48. It recommends, however, that, to remain relevant and responsive to emerging needs, the Australian strategy must be developed and coordinated alongside international strategies (including those in South East Asia) to address identified limitations, including porous borders with low levels of migration control, corruption amongst low-paid officials, and the fact that victims are treated as illegal immigrants and, therefore, often deported without a proper investigation of their case.²⁵
57. ALHR supports proposed action 49. At the same time, ALHR reminds the Government that it is not only party to the Trafficking Convention and Protocol, but also to seven core UN human rights treaties including the International Covenant on Civil and Political Rights (the **ICCPR**), International Covenant on Economic, Social and Cultural Rights (**ICESCR**), Convention on the Rights of the Child (**CRoC**), Convention on the Elimination of Discrimination Against Women (**CEDAW**), and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**).
58. Bearing in mind these commitments, ALHR reminds the Government that in addition to its responsibilities under the Trafficking Convention and Protocol, it also has responsibilities under international human rights law to:
- take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women” (Article 6 CEDAW);
 - take “measures to combat the illicit transfer and non-return of children abroad” (Article 11 CRoC);
 - take all “appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” (Article 19(1) CRoC);
 - protect children “from all forms of sexual exploitation and sexual abuse”, including by taking all appropriate national, bilateral and multilateral measures to prevent the “inducement or coercion of a child to engage in any unlawful sexual activity” and the “exploitative use of children in prostitution or other unlawful sexual practices”;
 - protect children against their “exploitative use” in pornographic performances and materials” (Article 34 CRoC); and
 - take “all appropriate measures to promote physical and psychological recovery and social integration” of child victims of sex trafficking (Article 39 CRoC).

²⁵ Larsen, J J, ‘Migration and people trafficking in southeast Asia’, *Trends & issues in crime and criminal justice no. 401*, Australian Government - Australian Institute of Criminology, November 2010, citing Thai NGO personal communication, March 2008.

ALHR submits that these are all important considerations when addressing ways to provide ongoing support to trafficking victims.

59. ALHR supports proposed action 50 and reminds the Government that labour exploitation violates basic human rights including the right to be free from inhuman or degrading treatment (Article 7 ICCPR), the right to be free from slavery, servitude and forced or compulsory labour (Article 8 ICCPR), and the right to life, liberty and security of persons (Articles 6, 9 ICCPR).

60. The failure by the Governments to adequately respond to labour exploitation charges and to provide rights of recourse before appropriate national authorities also violates certain protections in Article 2 of the ICCPR.

61. ALHR supports proposed action 51. It further submits that adequate funding should be committed towards developing community education materials which address trafficking in the context of labour exploitation (ie, not just sexual exploitation) to educate the wider community on the breadth of trafficking and commercial exploitation issues.

62. ALHR supports proposed action

- 53 but submits that exploited workers must not be penalised (whether by criminal sanction or otherwise) where they are the victims of employers who employ or refer for work non-citizens who do not have lawful permission to work.
- 55 but notes that, in order for the Government to influence and convincingly encourage other countries to ratify and implement key instruments, it must itself observe and be a strong and incisive leader in the development and implementation of laws and initiatives used to bring obligations under such conventions to fruition.
- 56, but at the same time urges the Government to ratify the Migrant Workers Convention to bolster its role as a leader in our region with respect to trafficking and labour exploitation of migrant workers.
- 58, but notes that in order to be an effective and incisive leader, it must first ensure that its own immigration and legal frameworks established to combat people trafficking are properly in order and comply with applicable international human rights standards.

Climate Change

63. ALHR supports the Government's commitment to its Clean Energy Future Plan, noted in proposed action 61, but reminds the Australian Government that significant investment is required by the government as part of a long term climate change strategy. This includes significant investments by the Government towards developing innovative, new, clean technologies which are accessible by all Australians.

Poverty

64. ALHR supports proposed action 62 and applauds the Government for its recent efforts to address poverty and social inclusion, including for students. ALHR reminds the Government of damning 2008 OECD statistics, which included that:²⁶

- 12% of Australians were living in poverty – which was higher than the OECD average and meant that 12% of the population survived on less than half the median average income;
- aged Australian were particularly affected by poverty; and
- for singles aged over 65, the income poverty rate was 50% - which was the highest rate of all OECD countries.

65. ALHR reminds the Government of the recommendations made by Committee on ICESCR in 2009 that Australia must take all necessary measures to combat poverty and social exclusion by developing comprehensive strategies which address these issues, and that it must keep these recommendations, and the above statistics in mind, when developing policies and programs pursuant to its Social Inclusion Agenda.

Chapter 3: The human rights experience of specific groups in Australia

Aboriginal and Torres Strait Islanders

Self-determination and consultation

66. ALHR notes that in Action 63, the Australian Government details its intentions to work with the National Congress of Australia's First Peoples, with one of the key priorities being to build a policy platform underpinned by the *UN Declaration on the Rights of Indigenous Peoples (the Declaration)*. ALHR refers to the NGO Coalition's *Consultation on UPR Recommendations Submission (the NGO Coalition)*, in which the Coalition strongly recommended consultation with Aboriginal and Torres Strait Islander peoples to develop an Action Plan for the full implementation of the rights contained in the *Declaration*. This is also consistent with UPR Recommendation 86.106. It appears from the wording of Action 63 that a "policy platform underpinned by the *Declaration*" is not the same thing as a full Action Plan for implementation of the *Declaration*. We are therefore of the view that the NHRAP does not go far enough. ALHR endorses the steps recommended by the NGO Coalition for implementation of the *Declaration*, which include extensive consultation with Aboriginal and Torres Strait Islander peoples to be undertaken by the National Congress with the support of the ATSILS and other peak Aboriginal and Torres Strait Islander bodies.²⁷ We call on the Australian Government to

²⁶ OECD, 'Country Note: Australia', *Growing Unequal?: Income Distribution and Poverty in OECD Countries* (2008) 1, available at www.oecd.org/dataoecd/44/47/41525263.pdf

²⁷ NGO Coalition, *Consultation on UPR Recommendations* para 10.1 (pp 37-38)

explicitly include the steps to be taken to develop an Action Plan for full implementation of the *Declaration* in the NHRAP.

67. We also note UPR Recommendations 86.24 and 86.106, which make various recommendations in relation to the implementation of the *Declaration*, including that the Constitution, legislation, policies and programmes be reviewed. The NGO Coalition also called for a review of all policies and laws for compatibility with the *Declaration*. We note that, with the exception of the consultation on the Constitutional recognition of Aboriginal and Torres Strait Islander peoples, the Action Plan does not include any measures for reviewing even Federal laws for compatibility with the *Declaration*. We believe this is an important process that should be undertaken as part of the NHRAP.
68. ALHR notes the lack of any responsibility being placed on State and Territory Governments (except for Victoria) in relation to self-determination and consultation. This is surprising and concerning, particularly in the NT where Aboriginal and Torres Strait Islanders make up approximately 30% of the population.²⁸ A number of UPR Recommendations²⁹ were specifically directed towards strengthening mechanisms for genuine consultation and participation with Aboriginal and Torres Strait Islander peoples, which is consistent with the *Declaration*, particularly, Articles 3, 18 and 19. We submit that each State and Territory should outline commitments and measures consistent with the *Declaration* to be adopted for the engagement with Aboriginal and Torres Strait Islander peoples in their respective jurisdictions.

Northern Territory Emergency Response:

69. We note Action 65 relates to consultation and refers to legislation introduced by the Federal Government based on the outcomes of the Stronger Futures consultations in the NT. ALHR is concerned that the Government's consultation process was not consistent with the *Declaration*. We note the submission of the Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures*, which outlined concerns with the consultation process, including the short time frame for, and duration of, consultations, a lack of timely information and information in an appropriate language, inadequate facilitation of discussions and the exclusion of certain issues of importance to Aboriginal and Torres Strait Islander people throughout the consultation process.³⁰ As a result, we do not believe the Stronger Futures consultations reflect a model of consultation and engagement to be replicated. In order to be consistent with the *Declaration*, effective communication and consultation is required at all stages of policy or law formulation, development and implementation. Further, free prior and informed consent should be obtained from Aboriginal and Torres Strait Islander peoples concerned *prior* to the development or implementation of any legislative or administrative measures affecting their interests. As a new Action, we would urge the Federal, State and Territory

²⁸ Australian Bureau of Statistics, *Population of the Northern Territory*, at <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/1362.7Feature%20Article1Mar%202011?opendocument&tabname=Summary&prodno=1362.7&issue=Mar%202011&num=&view> (accessed 14 February 2012).

²⁹ UPR Recommendations 86.95, 86.106 – 86.113, 86.118 and 86.120.

³⁰ Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011) at <http://www.amsant.org.au/documents/article/154/111608%20-%20APONT%20submission%20to%20Stronger%20Futures%20-%20Final-2.pdf> (accessed on 14 February 2012).

Governments to include development and implementation of a framework for self-determination in partnership with Aboriginal and Torres Strait Islander peoples, which includes detailed protocols for genuine consultation, roles and responsibilities.

Stolen generations and stolen wages

70. Whilst 'stolen wages' is listed as a priority in the Exposure Draft, together with 'the Stolen Generations', no action is actually proposed in the Exposure Draft to address the exploitation and injustice experienced by Aboriginal and Torres Strait Islander peoples whose wages were stolen. Further, the Exposure Draft does not provide for reparation, including compensation, for victims of the Stolen Generations.³¹ ALHR calls on the Australian Government to adhere to recommendations made by both the UN Human Rights Committee³² and Committee on the Elimination of Racial Discrimination,³³ to establish a national compensation scheme.³⁴

Community safety and the justice system:

71. The Action Plan largely focuses on measures already in place. This is insufficient to deal with the rising incarceration rates for Aboriginal and Torres Strait Islander peoples, particularly women and youth. It is clear that current measures are inadequate and that other avenues need to be explored. The Exposure Draft makes no reference to justice reinvestment strategies and programs, despite successive Aboriginal and Torres Strait Islander Social Justice Commissioners proposing justice reinvestment as a way forward to reduce Indigenous disadvantage and contact with the criminal justice system.³⁵ We recommend that as a further Action item, a commitment be made to sustainably fund the research, development, implementation and evaluation of community-specific justice reinvestment programs, particularly those that are community owned and driven.

72. As an additional Action item, relevant to the high levels of Aboriginal and Torres Strait Islander deaths in custody, ALHR calls on the State and Territory Governments to commit to establishing independent police complaints and investigation mechanisms in their respective jurisdictions.³⁶ We note that UPR Recommendations 86.89 and 86.91 urged the Government to provide for the independent review and investigation of deaths in custody, police use of force and police misconduct. This is further discussed below.

³¹ UPR Recommendation 86.97 called for establishment of a National Compensation Tribunal for the Stolen Generations.

³² United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee, Australia*, UN Doc. CCPR/C/AUS/CO/5 (7 May 2009), para 15

³³ Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination, Australia*, UN Doc CERD/C/AUS/CO/15-17 (13 September 2010), para 26.

³⁴ See also NGO Coalition, *Consultation on UPR Recommendations* para 10.3 (p 39)

³⁵ See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009); and Mick Gooda, 'Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system' speech made at ANTaR NSW Seminar - Juvenile Justice Strategy: A Better Way, Sydney (20 March 2010) at

http://www.hreoc.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html (accessed 14 February 2012).

³⁶ See also NGO Coalition, *Consultation on UPR Recommendations*, at para 10.4 (p 40).

A Rights-Based Approach:

73. A human rights-based approach should be adopted in relation to policies and programs affecting Aboriginal and Torres Strait Islanders. This requires the participation of rights-holders in the implementation, monitoring and evaluation of policies, projects and programs. Consistent with the Articles 3, 18 and 23 of the *Declaration*, this requires the genuine participation of Aboriginal and Torres Strait Islander peoples in the setting of benchmarks and indicators and in monitoring and evaluation of policies, programs and projects for progressive realisation of rights in relation to measures that affect their interests. There is no indication that Aboriginal and Torres Strait Islander peoples have participated in the setting of performance indicators or timeframes in the NHRAP. Further, there is no discussion as to how performance against the NHRAP is to be monitored and evaluated in a manner consistent with the *Declaration*, in relation to Actions that affect Aboriginal and Torres Strait Islander peoples. This should be addressed in the final NHRAP.

Women

74. ALHR refers to the NGO Coalition's *Consultation on UPR Recommendations submission*³⁷ and to ALHR's *Response to the Draft Human Rights Baseline Study* in which we strongly recommended the actions set out in the *CEDAW Action Plan for Australian Women* be included in the Baseline Study and the NHRAP. The *CEDAW Action Plan* was prepared on behalf of a broad coalition of Australian NGOs and sets out what the Commonwealth and State and Territory Governments should do to implement the CEDAW Committee's 2010 recommendations on women's human rights in Australia. We note that while the final Human Rights Baseline Study referred to several submissions supporting the actions set out in the *CEDAW Action Plan*³⁸ these actions do not appear to be fully incorporated into the NHRAP. This must be rectified.

Freedom from violence

75. ALHR refers to the 2010 *CEDAW Concluding Comments*³⁹ and the UPR recommendations related to violence against women and children.⁴⁰ In particular, we refer to the Australia Government's acceptance in full of UPR 86.80 that calls for the implementation of a National Plan to reduce violence against women (**National Plan**), including an independent monitoring mechanism.⁴¹ The Government's final Baseline Study notes

³⁷ NGO Coalition, *Consultation on UPR Recommendations* at 47-54; ALHR, *Response to Draft Baseline Study* at paragraph 31.

³⁸ *National Human Rights Action Plan – Baseline Study*, 2011 at 60.

³⁹ *Concluding Comments on CEDAW, Australia*, 30 July 2010, paragraphs 29, 40-41, 43, 44-45 at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf> (accessed on 12 February 2012).

⁴⁰ UPR Recommendations: 86.39, 86.47, 86.48, 86.53, 86.72, 86.73, 86.74, 86.76-86.82; 86.85, 86.86, 86.87, 86.92, 86.101, 86.118,

⁴¹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review Australia Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies by States under review (Australia's response to UPR recommendations) A/HRC/17/10/Add.1*, 31 May 2011 at 5, at: <http://c742005.r5.cf2.rackcdn.com/files/Australias-Formal-UPR-Response.pdf> (accessed on 12 February 2012).

several submissions recommended the inclusion of an independent monitoring mechanism for the National Plan to Reduce Violence against Women and Children.⁴² ALHR believes an independent monitoring mechanism promotes transparency and accountability which are important elements of good governance. Notably, the Exposure Draft makes no mention of an independent monitoring mechanism. ALHR believes such a mechanism is essential to ensure the long term success of the National Plan and must be incorporated into the NHRAP.

76. We further note that FaHCSIA's website continues to state that: 'the Commonwealth, States and Territories will indicate which actions they commit to in their individual implementation plans as part of the implementation process.'⁴³ The Exposure Draft states the performance indicator as 'implementation of national priorities is guided by three year action plans'.⁴⁴ Specific details about implementation strategies are therefore still required.
77. UPR recommendation 86.82 requires that 'all victims of violence have access to counselling and assistance with recovery.' The NGO Coalition notes this includes women in prisons⁴⁵ and ALHR has previously noted this should be extended to women in immigration detention.⁴⁶ Action 102 in the Exposure Draft refers to continuing to provide services to victims of violence, including counselling and the performance indicator as 'ongoing'. Action 179 which relates to health of people in prison refers to the Government supporting a working group on mental illness and cognitive disability. Notably there is no specific reference to counselling for victims of violence who are in prison. ALHR believes this is particularly important, given the high percentage of victims or survivors of violence among women prisoners.⁴⁷
78. ALHR refers to Action 103 which notes anyone at risk of domestic or family violence or sexual assault 'can access 1800RESPECT'. ALHR notes that calls to 1800 (freephone) numbers and 1300/13 numbers (local rate numbers) from mobiles can cost up to \$1.78 a minute.⁴⁸ This likely means that 1800RESPECT and indeed many other 1800 and 1300/13 numbers are not accessible for all who need them, as outlined in submissions to a recent Australian Communications and Media Authority (ACMA) inquiry on this topic.⁴⁹ We note the Attorney General's Department is aware of this issue and welcome their submission in support of the ACMA's proposal to change the *Telecommunications*

⁴² *National Human Rights Action Plan – Baseline Study*, 2011 at 62.

⁴³ FaHCSIA, *National Plan to Reduce Violence Against Women and Children*, at: <http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx> (accessed on 12 February 2012).

⁴⁴ *Exposure Draft Australia's National Human Rights Action Plan 2012*, Action 100

⁴⁵ NGO Coalition, *Consultation on UPR Recommendations*, March 2011, footnote 105.

⁴⁶ ALHR, *Response to Draft Baseline Study*, September 2011 at paragraph 35.

⁴⁷ See for example, Sister's Inside *Response to the Draft Baseline Study*, September 2011 at 7, at: <http://www.ag.gov.au/Documents/HRPB%20-%20NHRAP%20-%20Baseline%20Study%20-%20Submission%20-%20Sisters%20Inside.DOC> (accessed on 12 February 2012).

⁴⁸ ACMA, *Numbering: Structure of Australia's telephone numbering plan*, Consultation paper number one, 2010 at 45.

⁴⁹ See, for example, submissions in response to the ACMA's discussion paper, *Numbering: Calls to freephone and local rate numbers—The way forward at*: http://www.acma.gov.au/WEB/STANDARD/pc=PC_410246 by the Homeless Persons Legal Clinic, Women's Legal Services NSW and National Union of Students.

Numbering Plan 1997 such that calls from mobiles to 1800 number be free and calls from mobiles to 1300/13 numbers be charged at a local rate.⁵⁰ ALHR believes this should be included in the NHRAP.

79. ALHR refers to the Australian Government's acceptance of UPR 86.72 about strengthening efforts to combat family violence against women and children. We note Action 106 which refers to the ALRC and NSWLRC 2010 Report on Family Violence. This was a lengthy and extensive inquiry in which many important recommendations were made. It is disappointing that the Government's action outlined in the Exposure Draft with respect to this report is vague, requiring only that they 'respond'. Arguably, this can be satisfied by the Government saying they will consider the report and then do no more. While we do not question the Government's commitment to addressing family violence, this must be highlighted through specific, time bound indicators and measures. Such indicators and measures are vital in assessing any progress made and to highlight what further action is required.
80. To understand whether exclusion orders provide adequate protection and address homelessness for victims and/or survivors of domestic violence, ALHR has previously recommended the collection of sex disaggregated data regarding the number of interim and final exclusion orders applied for, granted and the reason for failing to grant exclusion orders.⁵¹ ALHR also recommended the number of tenancies terminated as a result of a final AVO should also be captured.⁵² We note this has not been included and again repeat our calls for the inclusion of such data collection.
81. ALHR again refers to Australia's 2010 *CEDAW Concluding Comments*, in which Australia was asked, in its follow up procedure, to provide information 'on the number and nature of reported cases of domestic violence, on the conviction and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence.'⁵³ ALHR further refers to the NGO Coalition's *Consultation on UPR Recommendations submission* in which the Coalition requested this information be made publicly available and recommended the data must be disaggregated by gender, ethnicity, disability, age, socio-economic status and geographical location.⁵⁴ ALHR again strongly recommends this be included in the NHRAP.⁵⁵
82. Based on Australia's 2010 *CEDAW Concluding Comments*, ALHR previously called for clear articulation in the NHRAP as to how Australia will 'address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or

⁵⁰ Attorney General's Department, *Submission on Numbering: Calls to freephone and local rate numbers. The way forward*, 1 December 2011, at: http://www.acma.gov.au/webwr/assets/main/lib410119/ifc37-2011_civil_justice-legal_svces.pdf (accessed on 12 February 2012).

⁵¹ ALHR, *Response to Draft Baseline Study* at paragraph 33.

⁵² *Ibid.*

⁵³ *Concluding Comments on CEDAW, Australia*, CEDAW/C/AUS/CO/7, 30 July 2010, paragraphs 29, at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf> (accessed on 30 August 2011).

⁵⁴ Australian NGO Coalition, *Consultation on UPR Recommendations*, recommendation 9 at 52.

⁵⁵ See: ALHR, *Response to Draft Baseline Study*, September 2011 at paragraph 34.

supported accommodation'.⁵⁶ While there is reference to some initiatives to address this in the final Baseline Study,⁵⁷ there are no specific measures or indicators included in the NHRAP. Again, this must be rectified.

Gender equality in public life

83. UPR recommendation 86.120 calls for efforts to continue to increase the representation of Indigenous women in decision making posts. This reference is notably absent from footnote 21 in the Exposure Draft. The Government's formal response to this UPR recommendation is that it is 'already reflected in existing laws or policies and Australia will continue to take steps to achieve relevant outcomes'.⁵⁸

84. ALHR further refers to the Government's acceptance of UPR recommendation 86.52 which calls for the strengthening of the *Sex Discrimination Act* and that consideration be given to the adoption of temporary special measures as recommended by CEDAW. The 2010 *CEDAW Concluding Comments* call for temporary special measures particularly to increase participation of women in political and public life, including Indigenous women and women from ethnic minorities.⁵⁹

85. ALHR submits UPR recommendations 86.120 and 86.52 are not adequately addressed in the Exposure Draft. ALHR recommends they be addressed through the proposals outlined below.

86. ALHR refers to the *CEDAW Action for Australian Women*⁶⁰ and to the NGO Coalition's *Consultation on UPR Recommendations submission*⁶¹ and again calls for the initiatives outlined below to be implemented to achieve gender equality in public life:

- Data on women's participation on public and private boards must be disaggregated by gender, ethnicity, disability, age, socio-economic status and geographical location and be made publicly available.
- The federal government must allocate funding to the Australian Institute for Company Directors to meet at least 25% of demand for training (as established in the 2010 application process), and establish within this process targets for scholarships to support training for Aboriginal and Torres Strait Islander women, women with disabilities, and CALD women to improve their representation on public and private boards.⁶²
- As part of the broader discussion of a 30% target for female private board participation and 40% target for female public board participation, additional targets

⁵⁶ ALHR, *Response to Draft Baseline Study*, September 2011 at paragraph 36.

⁵⁷ *National Human Rights Action Plan – Baseline Study*, 2011 at 127.

⁵⁸ *Australia's response to UPR recommendations* at 2.

⁵⁹ *CEDAW Concluding Comments 2010* at paragraph 27.

⁶⁰ YWCA, *CEDAW Action Plan For Women in Australia*, 2011 at 6, at:

<http://www.ywca.org.au/sites/ywca.org.au/files/CEDAW%20Action%20Plan%20final.pdf> (accessed on 13 February 2012).

⁶¹ NGO Coalition, *Consultation on UPR Recommendations* at 48-49.

⁶² Hockey backs quota for women on boards", *SMH*, 8 March 2011 at: <http://news.smh.com.au/breaking-news-national/hockey-backs-quota-for-women-on-boards-20110308-1blcf.html> (accessed on 13 February 2012).

must be set within two years to ensure the participation of Aboriginal and Torres Strait Islander women, women with disabilities and CALD women.

- The Government commit to introducing a mandatory target if a voluntary target of 40% female public board participation is not achieved by the 2013 review date and that the Government extend its census and review to private boards and commit to introducing a mandatory target if a voluntary target of 30% female private board participation is not achieved by the review date.

National Pay Equity Strategy

87. ALHR further notes that while the Australian Government accepted in part UPR recommendation 86.99 which relates to pay equity and comprehensive child care policy, there are no action items relating to this in the Exposure Draft. ALHR refers to the recent decision *Equal Remuneration Case* [2012] FWAFB 1000 - 1 February 2012 which found in favour of equal remuneration in the social, community and disability services industry. ALHR strongly recommends that indicators for the implementation of this decision be included in the NHRAP.

88. ALHR further refers to the NGO Coalition's *Consultation on UPR Recommendations submission*⁶³ for additional comments and recommendations for actions to be included in the NHRAP relating to Employment.

Freedom from discrimination

89. ALHR notes that several UPR recommendations were made related to strengthening and enhancing protections under anti-discrimination laws, including federal laws to prevent discrimination on the grounds of sexual orientation or gender.⁶⁴ Again there are a lack of specific indicators and measures included in the Exposure Draft with respect to this issue, with the current indicator being a reference to 'Exposure Draft legislation in 2012'.

Children and Young People

Federal Children's Commissioner

90. ALHR is of the view that the Australian Government's commitment ought to be stronger than simply 'exploring options' for establishing a new National Children's Commissioner. ALHR considers that the Action Plan ought to detail consultation and implementation of the Government's commitment to the creation of this new role.

91. ALHR is also of the view that the new Commissioner's mandate should include monitoring implementation of the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities* in Australia and should be complemented by an increase in supports and services, particularly to children with disabilities and Aboriginal and Torres Strait Islander children.

92. ALHR also encourages the development of a comprehensive policy for addressing and monitoring children's rights.

⁶³ NGO Coalition, *Consultation on UPR Recommendations* at 52.

⁶⁴ For example UPR recommendations 86.42- 86.48, 86.52, 86.66,- 86.68

93. ALHR notes with concern that the NHRAP does not make reference to the issue of children in detention. In this regard, ALHR points to the direction of the Committee against Torture to Australia to abide by the commitment that children are no longer held in immigration detention 'under any circumstances' and to ensure that 'any kind of detention of children' is always used as a measure of last resort and for the minimum period of time.⁶⁵

Older People

Elder Abuse

94. ALHR welcomes the Australian Government's plans of action 131 and 132 on elder abuse, but is disappointed that no other State or Territory, aside from Victoria, have committed to an Elder Abuse Strategy as a plan of the NHRAP. Elder Abuse is a serious human rights issue that requires an effective response from all levels of Government. ALHR recommends the Australian Government seek explicit support in the form of an action plan commitment by other States and Territories to develop a comprehensive Elder Abuse Strategy.⁶⁶

Financial Security

95. ALHR supports the Australian Government's proposed action 134 to improve the financial security of older Australian's through its established Advisory Panel on the Economic Potential of Senior Australians. However, ALHR notes that the proposed action refers to expired report delivery dates. In its report delivered on 12 December 2011 the Panel outlined over 32 concrete recommendations.⁶⁷ ALHR believes these recommendations fit well within the ambit of the NHRAP because they align with Australia's UPR commitments and more broadly the United Nations Principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002), both of which are supported by Australian governments.⁶⁸

96. ALHR welcomes the Australian Governments introduction of the Superannuation Guarantee (Administration) Amendment Bill 2011 to increase the superannuation guarantee rate. However, ALHR considers that this, and the NHRAP in general, fails to adequately target the high level of poverty experienced by older people in Australia.

⁶⁵ *Concluding Observations of the Committee Against Torture: Australia*, UN Doc CAT/C/AUS/CO/3, 40th sess (22 May 2008) [25].

⁶⁶ ALHR notes that each State and Territory has developed a resource for the public on the prevention and awareness of elder abuse which could be included as a part of their respective government's action plan commitment: <http://www.seniors.gov.au/internet/seniors/publishing.nsf/Content/Elder+abuse+prevention> (accessed 19 February 2012).

⁶⁷ See http://www.treasury.gov.au/EP/Content/publications/grey_gold/05_sor.asp.

⁶⁸ UPR Recommendations 17 to 20, 22, 32, 33, 49, 50, 60, 63. The United Nations Principles for Older Persons is supported by most levels of Government including the Australian Government, Victorian Government (*Ageing in Victoria: a Plan for an Age Friendly Society*) NSW Government (*Towards 2030: planning for our changing population*), ACT Government (*ACT Strategic Plan for Positive Ageing 2010-2014*).

Freedom from discrimination

97. ALHR applauds the Australian Government's commitment to support the work of and participate in the United Nations Open-Ended Working Group on Ageing, which has been established to consider the existing international framework of the human rights of older persons and identify gaps and how best to address them. However, rather than noting this action as "ongoing", ALHR urges the Australian Government to consider listing key milestones, public awareness raising and planned public consultation to provide for full public participation in the development of this important future human rights instrument.

Gay, lesbian, bisexual and sex and / or gender diverse people

Freedom from discrimination

98. We refer to our previous comments in our *Response to the Draft Baseline Study* with respect to equal rights existing for same-sex partners seeking to become parents or currently parenting.⁶⁹ These have not been adequately addressed in either the final Baseline Study or Exposure Draft.

Freedom from violence

99. While welcoming the Victorian Government's commitment to freedom from violence for gay, lesbian, bisexual and sex and / or gender diverse people as reflected through action 142, there is a need for more specific indicators and measures, including timeframes that say more than 'ongoing'.

100. We also repeat our earlier call for other States and Territories to highlight their commitment to achieving the UPR recommendations by providing time bound indicators and measures.

Sex and/or gender diverse people

101. We refer to Actions 143-146 and again repeat the call for clear, time bound indicators and measures to be included.

People at risk of or experiencing homelessness

Housing

102. ALHR applauds the Australian Government's action 147 to halve the rate of homelessness by 2020 and offer supported accommodation to all rough sleepers who seek it by 2020, and its interim goal of reducing the overall rate of homelessness by 20 % by 2013. However, ALHR expresses its concern that the Government's failure to recognise homelessness as a human rights issue and the correlating human rights violations homeless people face will not be adequately addressed in the process. ALHR urges the Government to acknowledge the interconnectedness of the right to adequate housing with other human rights, in accordance with the *International Covenant on Economic, Social and Cultural Rights*.

⁶⁹ ALHR, *Response to Draft Baseline Study* at paragraph 42.

103. ALHR welcomes proposed action 148, but notes with concern the extent to which this action is reliant on the commitment of States and Territories, the majority of which have not committed to this proposed action. ALHR urges other States and Territories to acknowledge their commitment to this action.

Freedom from Discrimination

104. ALHR encourages the Government to provide a more detailed, concrete action plan for action 152. As a result of the complex and interconnected nature of homelessness, many people experiencing homelessness also experience discrimination and social exclusion and have no recourse to legal assistance to deal with these issues. ALHR encourages the Government to further substantiate its UPR commitments by listing:⁷⁰

- the ways in which it will be funding legal assistance
- the type of legal assistance funded and
- the types of organisations which will be receiving that funding)

ALHR also encourages the Government to seek out and include a commitment from States and Territories to this action.

People with disability

105. ALHR welcomes the Governments concrete actions in relation to persons with a disability. However, ALHR considers there still to be significant gaps with Australia's UPR recommendations. In this respect ALHR refers the Government to the *NGO Coalition Consultation on UPR Recommendations*⁷¹. ALHR draws the Government's attention to the NGO Coalition's specific recommendation that the Government incorporate the United Nations Convention on the Rights of Persons with a Disability (**CRPD**) into domestic law through legislation.

Freedom from discrimination

106. ALHR applauds the Governments concrete and detailed action 155 and encourages the Government to model its other proposed actions on this response.

Carers

107. ALHR reminds the Government that carers are one of a number of groups in Australia who are vulnerable to disadvantage and to human rights abuses. They also have a tendency to experience compounded, intersectional disadvantage or discrimination.

108. ALHR commends the Government for recognising the hardships faced by carers, including financial hardships, employment and education barriers, and a lack of coordinated and adequately resourced supports networks and services. It also commends the Government for its \$54.3 million over five year investment to expand

⁷⁰ UPR recommendations 49, 50, 101, 116 to 118.

⁷¹ See Australian NGO Coalition, *Consultation on UPR Recommendations*, p 43. available at <http://www.hrc.org.au/files/NGO-Coalition-Submission-Consultation-on-UPR-recommendations.pdf> (accessed 19 February 2012).

mental health respite services to give carers and families of those with mental illness greater access to timely and appropriate respite arrangements. It notes, however, that such commitment must be reviewed, its monetary value increased, and its commitment continued beyond the initial five year period in order to meet the needs of Australia's aging population.

Economic Security

109. ALHR supports proposed action 174 and reminds the Government of the important findings made with respect to carers and financial security as submitted by Carers Australia in 2009 in its Submission to the National Human Rights Consultation. These included that:⁷²

- on average, the gross personal income of carers was more than 25% lower than non-carers, with a 40% disparity for almost half a million Australian carers;
- many carers are reliant on income support as their main source of household income due to inability to work resulting from ongoing / full time carer responsibilities;
- the satisfaction of carers in terms of being able to pay for household essentials, save money, and in relation to their ability to cover expenses generally are severely comprised when compared with a sample of the general population;⁷³ and
- the amount of superannuation likely to be available to a 30 year old woman who is a primary carer when she reaches 65 is likely to be negligible and insufficient to provide an adequate retirement income.

110. ALHR brings to the Government's further attention the significant findings of the Australian Institute of Health and Welfare (AIHW), which projected that by 2013:

- 265,200 of primary carers aged between 25 and 59 will be women, and of these, 121,900 (ie., 46%) will be unemployed or not in the workforce; and
- there will be 96,400 male primary carers, 43,400 of whom will be unemployed or out of the workforce.

111. These are important considerations which must be taken into account when considering improvements that need to be made to achieve adequate Carer Payments and ongoing annual Carer Supplements.

112. ALHR supports the proposed action 175 and reminds the Government of the following important findings published by Carers Australia in 2009 in its Submission to the National Human Rights Consultation, which included that the direct financial costs of caring can result in significant underestimated financial burdens, including inflated utility bills (arising, for example, from increased needs to heat and cool family homes),

⁷² Carers Australia Submission to the National Human Rights Consultation, June 2009. See http://www.carersaustralia.com.au/uploads/Carers%20Australia/CA%20Submissions/20090615_Carers%20Australia%20Submission%20to%20the%20National%20Human%20Rights%20Consultation.pdf.

⁷³ Deakin University and Carers Australia (2007), Australian Unity Wellbeing Index, Survey 17.1, Report 17.1, Melbourne.

equipment, modifications for access to homes, transport and for medication and pharmaceuticals.⁷⁴

Recognition and respect

113. ALHR supports proposed action 176 but notes the need for such national and targeted campaign to raise not only awareness of the role of carers, but also to highlight and assist with addressing disparities between primary and non-primary carers. For instance, there is 2004 AIHW data which suggests that:

- only some 47 % of male primary carers aged 25 to 54 were in paid full time employment then when compared to 80% of men who were not primary carers; and
- only 18% of female primary carers aged 25 to 54 were in paid fulltime employment then when compared to 39% of women who were not primary carers.

114. ALHR further submits there is a need to make particular efforts to improve the social participation of carers in public life. For example, in its 2009 Submission to the National Human Rights Consultation Carers Australia noted that carers are often socially isolated, and that the 2003 ABS Survey on Disability, Ageing and Carers had found that some 35% of primary carers had lost touch with their circle of friends due to their caring role.⁷⁵

115. In relation to proposed action 177, ALHR considers the Victorian Charter Supporting People in Care Relationships to be an important instrument for helping to bring greater awareness, respect, recognition, and support to those in carer relationships in Victoria. Accordingly, ALHR recommends that similar legislation be introduced in other Australian States and Territories. Further, ALHR submits that the recognition and protection afforded by such legislation must not be undermined or repealed as a result of monitoring its effectiveness.

Health and wellbeing

116. ALHR supports proposed action 178 and considers educating the general public about the role of carers, young and old, to be an important and necessary initiative. ALHR submits, however, that the Government needs to clarify whether its proposed \$1million funding towards a Young Carer Festival in each State and Territory is cumulative (therefore covering all States and Territory), or whether it is to be provided on a per State / Territory basis.

117. ALHR submits that if the proposed funding is intended to be cumulative (thereby intending to cover the funding requirements of all States and Territories to hold a Young Carer Festival), such funding will not be enough to deliver festivals which have an effective meaning and impact. The Government should ensure that the level of funding

⁷⁴ Carers Australia Submission to the National Human Rights Consultation, June 2009. See http://www.carersaustralia.com.au/uploads/Carers%20Australia/CA%20Submissions/20090615_Carers%20Australia%20Submission%20to%20the%20National%20Human%20Rights%20Consultation.pdf.

⁷⁵ Carers Australia Submission to the National Human Rights Consultation, June 2009. See http://www.carersaustralia.com.au/uploads/Carers%20Australia/CA%20Submissions/20090615_Carers%20Australia%20Submission%20to%20the%20National%20Human%20Rights%20Consultation.pdf; Australian Bureau of Statistics (2008) A Profile of Carers in Australia, Australia, Canberra.

committed to such initiatives is enough to deliver a lasting / impressionable meaning / effect.

People in prisons

Health

118. ALHR notes that the Victorian Government is to regularly review justice health care standards and implement a justice mental health strategy.⁷⁶ Despite the lack of time-bound indicators and specific measures contained in this action, ALHR is pleased that the Victorian Government is viewing this as a human rights issue worthy of inclusion in the NHRAP. As prisons fall under the jurisdiction of State and Territory Governments, it is unfortunate that no other State or Territory Government has demonstrated a similar commitment to addressing the growing numbers of mentally ill or cognitively impaired people in prisons in the Exposure Draft. We note that in the Northern Territory, increasing numbers of people who are mentally ill or cognitively impaired are being kept in prison for extended periods because no other appropriate facility is available.⁷⁷ This is unacceptable and should form the basis for an action under the NHRAP.

Oversight mechanisms

119. Whilst we note that the Federal Government has committed to working with States and Territories for the ratification of *Optional Protocol to the Convention against Torture (OPCAT)*, we are concerned that no action is included in this section that sets out the timing and substance of the steps to be taken to effectively *implement* the (OPCAT) in each State and Territory. ALHR has previously written to the Commonwealth, State and Territories Attorneys-Generals calling for an independent 'preventative mechanism' to be established in each jurisdiction in accordance with the requirements of OPCAT. ALHR would like to see the timing and substance of measures to be taken to effectively implement OPCAT in each jurisdiction of Australia as an action item in the final NHRAP.

120. ALHR is concerned with action 184, that State and Territory courts will continue to independently investigate all deaths in custody. Whilst we do not doubt the independence of the courts, we wish to emphasise our concerns with the practical independence of the investigation process where a death in custody occurs in police custody and the police are given responsibility for the collection of evidence. We note the recent death of an Aboriginal man in police custody in Alice Springs. It is a serious concern that the people responsible for the collection of evidence and witness statements are the NT Police, despite this man's death occurring in the custody of the NT Police. This process cannot be considered wholly independent as it should be. There are a range of alternatives to police as investigators of deaths in custody. We urge State and Territory Governments to include as an action in the NHRAP, taking steps to review the actual independence of investigations into deaths in custody, the models that exist elsewhere and implementing a model that prevents police investigating deaths that occur in police custody.

⁷⁶ *Exposure Draft Australia's National Human Rights Action Plan 2012*, Action 180.

⁷⁷ See <http://news.smh.com.au/breaking-news-national/mentally-ill-locked-up-in-prison-judge-20090916-frf7.html> (accessed 19 February 2012).

Refugees, asylum seekers, migrants and people from culturally and linguistically diverse backgrounds

Assessment of protection claims and non-refoulement obligations

121. ALHR welcomes the passing of the *Migration Act (Complementary Protection) Bill 2011* (Cth), which is a positive first step in implementing Australia's non-refoulement obligations under the *International Covenant on Civil and Political Rights*, the *Convention against Torture* and the *Convention on the Rights of the Child*.⁷⁸

Immigration Detention

122. The Australian Government has accepted in the Baseline Study and Exposure Draft that indefinite and arbitrary detention is unacceptable, however the *Migration Act* still allows for an unlawful non-citizen to be detained indefinitely. Action 192 contains the Federal Government's commitment to ensuring that detention is not indefinite or otherwise arbitrary and limited to certain classes of asylum seeker. Action 193 states that the length of time and conditions of detention are subjected to three monthly reviews. ALHR is concerned however that these commitments are not enshrined in legislation, nor do they appear to be consistently implemented in practice. The NHRAP should at least detail how the Government will ensure that detention is not indefinite or arbitrary and processes for the review of the length and conditions of detention, including through judicial review.

123. A number of recommendations arising out of the UPR process called on the Australian Government to review its mandatory detention regime.⁷⁹ The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have, in their respective Concluding Observations, also called for an end to mandatory detention. The Human Rights Committee has also noted that a system of mandatory detention does not provide sufficient protection against arbitrary detention.⁸⁰ We maintain that the NHRAP should include a timeframe for repeal of the mandatory detention provisions of the *Migration Act* and amendments that would provide for asylum seekers arriving by boat to be treated in the same manner as those arriving by air.

124. We note that children continue to be detained in immigration detention facilities for months on end, including unaccompanied minors, despite an amendment to the *Migration Act* affirming the principle that asylum seeker children should only be detained as a measure of last resort. As previously recommended by ALHR in its submission on the Draft Baseline Study, the NHRAP should include implementation of the outstanding recommendations from the Australian Human Rights Commission's *National Inquiry into Children in Immigration Detention*.⁸¹

⁷⁸ The laws could be made stronger and more consistent with Australia's international human rights obligations, as per the recommendations contained in the NGO Coalition, *Consultation on UPR Recommendations*, at 9.4(c) (p 36).

⁷⁹ See for example, UPR Recommendations 86.127 and 86.126

⁸⁰ See *A v Australia* (CCPR Communication CCPR/C/59/D/560/1993)

⁸¹ Australian Human Rights Commission, *A Last Resort? National Inquiry into Children in Immigration Detention* at http://www.hreoc.gov.au/human_rights/children_detention/index.html (accessed 15 February 2012).

125. Action 195 states that the Government will continue moving asylum seekers into community detention arrangements. However, this model is discretionary-based and therefore inadequate. Steps towards implementing administrative, procedural and legal safeguards in relation to the movement of asylum seekers, particularly children, into community detention should be included in the NHRAP.

126. Action 199 refers to the ongoing commitment to provide appropriate physical and mental health care to asylum seekers in detention. We note that the Northern Territory Branch of the Australian Medical Association views mandatory detention as “medically harmful” and has likened the detention of children to “institutionalised child abuse”.⁸² Prolonged detention, together with the conditions of detention, is adversely impacting on the health of many asylum seekers. It should therefore be the preference of the Government to ensure that if asylum seekers are detained, it is for the shortest time possible.

Monitoring of NHRAP

127. While encouraging the proposed establishment of a joint Government and NGO Advisory Group, ALHR notes with concern that the progress report proposed to be prepared after three years and the final report to be prepared after five years do not contemplate consultation with the wider NGO and human rights stakeholder community.

Conclusion

16. ALHR wishes to thank the Department for the opportunity to comment on the Exposure Draft. ALHR is of the view that the NHRAP is an important step towards improving human rights standards and protections in Australia. However, without a NHRAP that contains ‘specific, measurable and achievable goals with clear timelines in which to achieve practical actions’, the utility and relevance of the NHRAP itself becomes endangered. In this respect, our primary criticism of this Exposure Draft has been the frequent use of ‘ongoing’ as a performance indicator. We strongly urge the Commonwealth, State and Territory Governments to incorporate specific, measurable and achievable goals and clear timeframes in which to achieve practical actions in the final NHRAP. Failure to do so would be a missed opportunity for the Australian Government to tangibly meet its UPR commitments and to ultimately better promote and protect human rights in Australia

⁸² Northern Territory Branch of the Australian Medical Association, *Submission to the Joint Select Committee on Australia’s Immigration Detention Network*, 25 September 2011, page 1.

17. ALHR intends to continue its contribution to the development of the NHRAP and will welcome any opportunity to provide further comment.

Yours faithfully

A handwritten signature in black ink that reads "Stephen Keim". The signature is written in a cursive style and is underlined with a single horizontal line.

Stephen Keim SC

President

0433 846 518

s.keim@higginschambers.com.au

Major Contributors: Lily Tsen (Vic Co-Convenor), Liz Snell (Ordinary Member, NSW), Breony Allen (WA Co-Convenor), Tiffany Henderson (WA Co-Convenor), Adrienne Walters (NT Co-Convenor).

Australian Lawyers for Human Rights

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