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Dear Sir/Madam

**Submission to the Attorney-General's Department's National Human Rights Action Plan  
Baseline Study**

**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 (**the Action Plan**) Draft Baseline Study (**the Baseline Study**). This second submission follows on from our contribution to the Action Plan's Background Paper in February 2011. The intention of our second submission is to comment on how the Baseline Study can be improved to ensure that it is a comprehensive and accurate assessment of human rights in Australia.
2. 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.

3. ALHR believes that the Baseline Study is a good first start, but considers the Study could do much better. The following comments are intended to strengthen the Baseline Study developed 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' 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.
4. ALHR believes that Australia's current protection and promotion of human rights is piecemeal and inadequate. ALHR is of the view that the development of an Action Plan is an important step in promoting and improving human rights protection in Australia. As we have indicated, while the Baseline Study is a good first start, ALHR strongly urges the Government to heed the comments of civil society and incorporate these into the final Baseline Study.
5. ALHR welcomes the Australian Government's commitment to implement the Universal Periodic Review (UPR) recommendations accepted by Australia through the Action Plan.<sup>1</sup> ALHR was also encouraged to see the strong support by nation states at the UPR of Australia's development of an Action Plan.<sup>2</sup> ALHR is disappointed, however, that the Government rejected UPR recommendations relating to the establishment of a Human Rights Act,<sup>3</sup> reparations for Stolen Generations and compensation for Stolen Wages,<sup>4</sup> same-sex marriage,<sup>5</sup> and the abolition of mandatory detention<sup>6</sup> and the equal access to and protection by irregular migrants under Australian law.<sup>7</sup>

## About ALHR

6. ALHR was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).
7. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national

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<sup>1</sup> Hon Robert McClelland MP, Address to the NGO Forum on Human Rights, Canberra, 22 June 2011 accessed on 26 August 2011 at:

[http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/Speeches\\_2011\\_SecondQuarter\\_22June2011-1-AddresstotheNon-GovernmentOrganisationsForumonHumanRights](http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/Speeches_2011_SecondQuarter_22June2011-1-AddresstotheNon-GovernmentOrganisationsForumonHumanRights).

<sup>2</sup> 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) accessed on 2 September 2011 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A\\_HRC\\_WG.6\\_10\\_L.8-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf).

<sup>3</sup> Recommendation 22, *Australia's Report of the Working Group on the UPR* (Addendum) (A/HRC/17/10/Add.1) accessed on 2 September 2011 at <http://www.hrlc.org.au/files/Australias-Formal-UPR-Response.pdf>.

<sup>4</sup> Recommendation 97, *Ibid*.

<sup>5</sup> Recommendation 70, *Ibid*.

<sup>6</sup> Recommendations 126, 132, *Ibid*.

<sup>7</sup> Recommendation 133, *Ibid*.



membership of over 2000 people, with active National, State and Territory committees.

8. 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 Submission of the United Nations Office of the High Commissioner for Human Rights (Regional Office for the Pacific)**

9. ALHR supports and endorses the comprehensive submission on the Baseline Study provided by the United Nations Office of the High Commissioner for Human Rights (Regional Office for the Pacific) (OHCHR) in July 2011.<sup>8</sup> We consider the OHCHR to have addressed the key issues relating to the Action Plan and give support to the recommendations put forward by the OHCHR. Our submission is intended to supplement and reinforce the OHCHR submission.

### **Overview of Comments on the Baseline Study**

10. As noted above, the Baseline Study is an important first step in ensuring an effective Action Plan that is apt for Australia. Indeed it is difficult to imagine a successful Baseline Study that does not first take stock of some of the most comprehensively recognised human rights issues in Australia
12. While an Action Plan should necessarily focus on a manageable number of issues, in line with the approaches adopted by countries like New Zealand and Sweden, ALHR is disappointed that many of the issues raised at the UPR are absent from the Baseline Study, for example, the rights of intersex people and child prostitution. We are also concerned by the failure to include many authoritative studies, particularly those relating to Aboriginal and Torres Strait Islander peoples.<sup>9</sup>
13. ALHR recognises the importance of the Baseline study as a tool to measure the success of the Action Plan upon its implementation, but also as a tool to guide the focus and resources of Government in the coming decade. In that respect, ALHR particularly endorses the Baseline Study of New Zealand, as a tool that provides a full and frank snapshot of the human rights situation in that country. ALHR continues to encourage the Government to follow the best practices of other state's National Human Rights Action Plans, including New Zealand and Sweden. ALHR recommends

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<sup>8</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR) Regional Office for the Pacific, 'Comments on the Draft Baseline Study for a National Human Rights Action Plan, Australia' (2011) accessed on 2 September 2011 at <http://www.humanrightsonline.org.au/CustomContentRetrieve.aspx?ID=1513501>.

<sup>9</sup> See eg. United Nations, 'Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia' (Advanced unedited version), 4 March 2010, (UN Doc A/HRC/15) accessed on 2 September at <http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.pdf>.

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

14. ALHR strongly encourages the Government to ensure the Action Plan contains specific, measurable and achievable goals with clear timelines in which to achieve practical actions.

### **Comments on Chapter One**

#### *Australia's international human rights commitments*

15. ALHR refers to 1.1 of the Draft Baseline Study and welcomes the Government's commitment to ratify the Optional Protocol to the Convention Against Torture (OP-CAT)<sup>10</sup> and acceding to the Optional Protocols to the Convention on the Elimination of all forms of Discrimination Against Women (OP-CEDAW) and the Convention on the Rights of Persons with a Disability (CRPD).
16. ALHR notes with concern that the Baseline Study does not, in its current form, include the numerous treaties that Australia has not ratified. The issue of ratification of the following treaties was made by several States at the recent UPR of Australia, and previously by respective treaty bodies:
  - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR);
  - The Convention on Enforced Disappearances (CED);
  - The International Covenant on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW)
  - International Labour Organisation Convention No. 169 (ILO Convention No. 169).

The Baseline Study should list these important treaties to which Australia is not a party, and:

- outline the Government's proposed steps and timeline to ratify these treaties,
- provide reasons as to why these treaties have not been ratified to date, and

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<sup>10</sup> Recommendations 1-5, See Report of the Working Group on the Universal Periodic Review, Australia, Addendum 'Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', 31 May 2011, (A/HRC/17/10/Add.1) ) p.2, accessed on 2 September 2011 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf).



- include a commitment on behalf of the Government to regularly review any reservations to treaties or treaties to which Australia is not a party.
17. 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 to a number of treaties.<sup>11</sup> In this respect ALHR refers to the NGO Coalition's *Consultation on UPR Recommendations submission (NGO Coalition's submission)* for further elaboration of what should be included in the Baseline Study on this issue and its analysis of the measures necessary for the Government to implement the above human rights instruments.<sup>12</sup>

#### *Consolidation of anti-discrimination Legislation*

18. ALHR welcomes the Government's commitment at 1.5.3 of the Draft Baseline Study to enhance protections against discrimination through the consolidation of anti-discrimination legislation into a single Act.<sup>13</sup> It is important this happens through a process of consultation.
19. ALHR refers to the NGO Coalition's submission for further elaboration of what should be included in the Baseline Study and Action Plan with respect to the consolidation project.<sup>14</sup> ALHR particularly notes that the Draft Baseline Study fails to adequately address the importance of intersectional discrimination, that is, discrimination that recognises that a person may be subject to discrimination based on several aspects of their identity simultaneously, for example, on the basis of their sex and race, sex and disability, or sexual orientation and age.
20. ALHR further refers to the 2008 review of the Sex Discrimination Act and the Government's commitment to consider the unimplemented recommendations arising from the review as part of the consolidation process.<sup>15</sup> The ALHR recommends that these outstanding recommendations incorporated into the Action Plan.

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<sup>11</sup> ALHR considers it appropriate for Australia to remove the reservations it has made to article 4 of the *Convention on the Elimination of all forms of Racial Discrimination* (CERD), articles 10(2), 10(3) and 20 of the *International Covenant on Civil and Political Rights* (ICCPR) and article 37(4) of the *Convention on the Rights of the Child* (CRC).

<sup>12</sup> Australian NGO Coalition, *Consultation on UPR Recommendations*, April 2011 at 4-7, accessed on 2 September 2011 at: <http://www.hrlrc.org.au/files/NGO-Coalition-Submission-Consultation-on-UPR-recommendations.pdf>.

<sup>13</sup> Recommendation 42, Report of the Working Group on the Universal Periodic Review, Australia, Addendum 'Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', 31 May 2011, (A/HRC/17/10/Add.1) ) accessed on 29 August 2011 at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf).

<sup>14</sup> Recommendations 10-13, Australian NGO Coalition, 'Consultation on UPR Recommendations', April 2011, accessed on 30 August 2011 at: <http://www.hrlrc.org.au/files/NGO-Coalition-Submission-Consultation-on-UPR-recommendations.pdf>.

<sup>15</sup> Australian Government, 'Response to the Senate Standing Committee on Legal and Constitutional Affairs, Effectiveness of Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality', accessed on 29 August 2011 at [http://www.aph.gov.au/senate/committee/legcon\\_ctte/sex\\_discrim/gov\\_response.pdf](http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/gov_response.pdf).

## Comments on Chapter Two

21. ALHR notes that the Draft Baseline Study does not include a section on torture prevention. In this respect, we refer the Government to the recommendations of various international and domestic bodies.<sup>16</sup>

### *Access to justice*

22. We note the Draft Baseline Study includes reference to the 2009 Access to Justice Inquiry. ALHR recommends full implementation of the recommendations arising from that inquiry.

### *Counter-terrorism measures*

23. ALHR notes that, in its discussion of counter-terrorism measures, the Draft Baseline Study does not include a comprehensive description of the quantity or type of measures introduced in Australia since 2001.<sup>17</sup>

### *Use of force by police*

24. ALHR welcomes the Government's specific consideration of the use of force by police, which was raised as a specific concern by the NGO Coalition's submission to the UPR, and by several States at Australia's UPR. However, ALHR considers that the Draft Baseline Study does not adequately cover this issue. The Concluding Observations of the Human Rights Committee in 2009 made several recommendations in relation to the use of force by Australian police, including<sup>18</sup>:

- establish a mechanism to carry out independent investigations of complaints concerning excessive use of force by law enforcement officials;
- initiate proceedings against alleged perpetrators;
- increase its efforts to provide training to law enforcement officers with regard to excessive use of force, as well as on the principle of proportionality when using force;
- ensure that restraint devices, including TASERs, are only used in situations

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<sup>16</sup> United Nations Committee Against Torture Report of Australia, 2008, (CAT/C/AUS/CO/3/Add.1, p. 1; United Nations Human Rights Committee, 'Report on Australia', 2009, (CCPR/C/AUS/CO/5), para. 11.; Parliamentary Joint Committee on Intelligence and Security, 'Review of Security and Counter-terrorism Legislation', 2006; United Nations Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, 'Australia: Study on Human Rights Compliance while Countering Terrorism', 2006, (UN Doc A/HRC/4/26/Add.3).

<sup>17</sup> A comprehensive list of the relevant legislation is available from the Government's, 'Australian National Security' webpage, accessed on 6 September 2011 at <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/826190776D49EA90CA256FAB001BA5EA?OpenDocument>.

<sup>18</sup> Concluding Observations of the Human Rights Committee, 2009, (CCPR/C/AUS/CO/5), p5, para 21.



where greater or lethal force would otherwise have been justified;

- bring its legislative provisions and policies for the use of force into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and
- provide adequate reparation to the victims

Australia's Action Plan should specifically address what work is being undertaken to ensure that these recommendations are carried out.

### Comments on Chapter Three

#### *Aboriginal and Torres Strait Islander Peoples*<sup>19</sup>

25. ALHR notes that this section does not include a reference to Australia's support of the UN Declaration on the Rights of Indigenous Peoples<sup>20</sup>, a key international instrument that sets out the individual and collective rights of Indigenous peoples.<sup>21</sup> The Baseline Study should align with Australia's formal endorsement of the Declaration. In particular, any measures to be undertaken or outcomes to be identified, must be done with full involvement of affected Aboriginal and Torres Strait Islander peoples and in a manner consistent with the Declaration's principles of free, prior and informed consent and self-determination. This approach aligns with several accepted recommendations by the Government at its recent UPR.<sup>22</sup>
26. ALHR notes that the Draft Baseline Study is silent on many of the well-known and lesser-known existing reports and recommendations on Aboriginal and Torres Strait peoples in Australia.<sup>23</sup> The Government must review and consider these reports and recommendations in the Baseline Study.
27. ALHR also notes with concern that there is no acknowledgment in the Draft Baseline Study of the victims of the Stolen Generations and Stolen Wages, nor mention of any

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<sup>19</sup> ALHR acknowledges the diversity in culture, language, kinship structures and ways of life within Indigenous peoples, and recognises that Indigenous peoples retain their distinct cultures irrespective of whether they live in urban, regional or remote parts of the country.

<sup>20</sup> United Nations, 'Declaration on the Rights of Indigenous Peoples' (A/Res/61/295). Australia adopted the UN Declaration in April 2009.

<sup>21</sup> For example the Australian Human Rights Commission has aimed to bring the Declaration to life by highlighting existing examples of Indigenous peoples' rights in action in its 'Community Guide to the UN Declaration on the Rights of Indigenous Peoples', 2010, accessed on 31 August 2011 and available at [http://www.hreoc.gov.au/declaration\\_indigenous/declaration\\_full.html](http://www.hreoc.gov.au/declaration_indigenous/declaration_full.html).

<sup>22</sup> Recommendations 109 – 111, Report of the Working Group on the Universal Periodic Review, Australia, Addendum 'Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', 31 May 2011, (A/HRC/17/10/Add.1) ) p.8, accessed on 2 September 2011 at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf).

<sup>23</sup> To name a few: Royal Commission into Aboriginal Deaths in Custody (1991); Bringing them Home – the Stolen Children Report (1997), Patricia Anderson and Rex Wild QC (Board of Inquiry into the Protection of Aboriginal Children from Sexual abuse), 'Little Children are Sacred: Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse' (2007).

action by the Government to compensate these victims. The Baseline Study must include recommendations from numerous human rights instruments, which call on Australia to provide reparation, including compensation, to these victims.<sup>24</sup>

28. ALHR welcomes the Government's commitment to halving the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade (by 2018).
29. In line with this Commitment, the Draft must include, and address, the UPR recommendations that Australia should ratify ILO Convention 169 on the Rights of Indigenous and Tribal Peoples.<sup>25</sup>

## *Women*

### *Freedom from violence*

30. ALHR notes that the Draft Baseline Study refers to Commonwealth, State and Territory governments endorsing the National Plan to Reduce Violence against Women and Children. ALHR welcomes this endorsement and looks forward to the release of the implementation plans. ALHR further warmly welcomes the Government's acceptance of UPR recommendation 86.80, in particular, the independent monitoring of this National Plan to Reduce Violence against Women and Children. An independent monitoring mechanism is important to ensure transparency and accountability. We note reference to the independent monitoring mechanism is absent in the Draft Baseline Study. ALHR strongly recommends that this independent monitoring mechanism be outlined in specific and further detail in the Action Plan.
31. ALHR also strongly urges the Government to include in the Draft Baseline Study the actions set out in the 'CEDAW Action Plan for Australian Women'.<sup>26</sup> 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.

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<sup>24</sup> See Recommendation 97 [Rejected], Report of the Working Group on the Universal Periodic Review, Australia, Addendum 'Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', 31 May 2011, (A/HRC/17/10/Add.1), p.7, accessed on 2 September 2011 at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A\\_HRC\\_17\\_10\\_Add.1\\_Australia\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf); Para 21, Concluding Observations of the Human Rights Committee, Australia, 7 May 2009, (CCPR/C/AUS/CO/5); See also, paragraph 26, Concluding Observations of the Committee on the Elimination of Racial Discrimination, Australia, 13 September 2010, (CERD/C/AUS/CO/15-17).

<sup>25</sup> See Report of the Working Group on the Universal Periodic Review, Australia, Addendum 'Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review', 31 May 2011, (A/HRC/17/10/Add.1), recommendations 8, 11 at 7.

<sup>26</sup> Young Women's Christian Association (YWCA), 'CEDAW Action Plan for Women in Australia', 2011, accessed on 6 September 2011 at <http://ywca.org.au/advocacy-policy/our-united-nations-work>.



32. ALHR welcomes the Government's acknowledgment in Section 3.6.3(b) of the Draft Baseline Study of the link between homelessness and domestic violence. In Section 3.6.3(b) the Government states that exclusion orders are available in all Australian jurisdictions. While welcoming the availability of exclusion orders as a means to provide protection for victims of domestic violence who remain at home, ALHR questions their effectiveness in providing urgent protection. For example, ALHR notes the recent amendments to the *Residential Tenancies Act 2010* (NSW) to include domestic violence provisions.<sup>27</sup> Section 79 provides "the making of a final apprehended violence order that prohibits a co-tenant or a tenant from having access to the residential premises" is required before a tenancy can be terminated. Given it takes time for a final AVO to be made and housing is generally an urgent need, ALHR submits this is very unlikely to provide adequate protection for victims of domestic violence.
33. To understand whether exclusion orders are providing adequate protection and addressing homelessness for victims of domestic violence, ALHR recommends the collection of sex disaggregated data, regarding the number of interim and final exclusion orders applied for, granted and the reasons for failing to grant exclusion orders. The number of tenancies terminated as a result of a final AVO should also be captured.
34. ALHR further refers to the 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."<sup>28</sup> ALHR further refers to the NGO Coalition's submission, which called for this information to be made publicly available and recommended the data be disaggregated by gender, ethnicity, disability, age, socio-economic status and geographical location.<sup>29</sup> ALHR strongly recommends such action be included in the Action Plan.
35. ALHR further refers to UPR recommendation 86.82, regarding all victims of violence having access to counselling and assistance with recovery, a recommendation Australia accepted. As stated in the NGO Coalition's submission, this must extend to women in prisons<sup>30</sup> and this should be clearly outlined in the Action Plan. We also believe that this should be extended to women in immigration detention.
36. At 3.7.3, the Draft Baseline Study refers to recommendations made in the NGO Shadow Report on the implementation of CEDAW in relation to abuse and violence against women with a disability living in institutions. In addition to this, the CEDAW Committee's 2010 Concluding Comments on Australia recommended that Australia "address, as a matter of priority, the abuse and violence experienced by women with

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<sup>27</sup> See particularly ss79 and 100 *Residential Tenancies Act 2010* (NSW).

<sup>28</sup> United Nations Committee on the Elimination of all forms of Discrimination Against Women (CEDAW), Concluding Comments on CEDAW, Australia, 30 July 2010, (CEDAW/C/AUS/CO/7), para. 29, accessed on 30 August 2011 at (<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf>).

<sup>29</sup> Australian NGO Coalition, 'Consultation on UPR Recommendations', recommendation 9 at 52.

<sup>30</sup> Australian NGO Coalition, 'Consultation on UPR Recommendations' at 52.

disabilities living in institutions or supported accommodation.”<sup>31</sup> This should be clearly articulated in the Action Plan.

### *Right to gender equality*

#### *(a) Women in political and public life*

37. The Draft Baseline Study acknowledges the inadequate progress made with respect to the representation of women on boards and in senior management levels of Australia’s top 200 ASX-listed companies. We refer to the concrete actions required to remedy this situation as outlined in the NGO Coalition’s submission.<sup>32</sup> We strongly recommend those actions be included in the Action Plan.
38. With respect to women and employment, ALHR again refers to the NGO Coalition’s submission which makes specific recommendations relating to paid parental leave, improving the reporting of sexual harassment in the workplace and the development of a comprehensive child care policy.<sup>33</sup>

#### *Children and young people*

39. The Draft Baseline Study states that the Government’s UPR response included considering the potential role of a Commonwealth Commissioner for Children and Young People.<sup>34</sup> The Baseline Study should detail actions the Government is taking to consult and implement this commitment. The Commissioner’s mandate should include monitoring implementation of the CRC and CRPD in Australia and should be complemented by an increase in supports and services, particularly to children with disability and Aboriginal and Torres Strait children.
40. The Draft Baseline Study refers to Australia’s ratification of the CRC. The Baseline Study should also make reference to its reservation in relation to Article 37(c) of the CRC and discussion of removal this reservation.<sup>35</sup>

#### *Older People*

41. ALHR welcomes the Government’s inclusion of its commitment to fund a dedicated Commonwealth Age Discrimination Commissioner from July 2011, together with the positive step of raising the Aged Pension. However, while the Draft Baseline Study notes community concern about the standard of living of older people, ALHR submits that the Draft Baseline Study fails to adequately discuss the high level of poverty experienced by older people in Australia. For example, for single people aged over 65, the income poverty rate is 50 percent – the highest of all the countries in the

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<sup>31</sup> ‘Concluding Comments on CEDAW’, Australia at 43

<sup>32</sup> Australian NGO Coalition, ‘Consultation on UPR Recommendations’ at 48-49, and recommendation 17.

<sup>33</sup> Australian NGO Coalition, ‘Consultation on UPR Recommendations’, recommendations 11-13 at 52.

<sup>34</sup> See Report of the Working Group on the Universal Periodic Review, Australia, Addendum ‘Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review’, 31 May 2011, (A/HRC/17/10/Add.1), recommendations 28-29 at 3.

<sup>35</sup> Australian NGO Coalition, ‘Consultation on UPR Recommendations’, at 7.



OECD.<sup>36</sup> Single women are even more vulnerable. In this respect, ALHR recommends that the Government more adequately address how it is combating this high rate of poverty in the final Baseline Study.<sup>37</sup>

#### *Gay, lesbian, bisexual and sex or gender diverse people*

42. ALHR welcomes the Government's commitment to include sexual orientation and gender identity as a part of the Federal consolidation of anti-discrimination legislation. However, to adequately discuss this group's high rate of discrimination within Australia, the Baseline Study must also identify that most Australian States and Territories fail to extend the equal rights, responsibilities and recognition to same-sex partners seeking to have, or currently raising, children. It must also discuss proposals for ensuring that equal rights exist for same-sex partners seeking to become parents, or currently parenting.<sup>38</sup>

#### *People with disability*

43. ALHR commends the endorsement of a National Disability Strategy (NDS) by all Governments and its inclusion in the Draft Baseline Study. The NDS aims to address Australia's obligations contained in the Convention on the Rights of Persons with Disabilities. The NDS still requires the development of specific measurable actions however, to address the key areas. In this respect, ALHR draws the Government's attention to the recommendation in the Australian Human Rights Commission's submission on the UPR process, which urges that the NDS be integrated with the Action Plan, with clearly stated benchmarks, timelines and monitoring processes.<sup>39</sup>

#### *People in prisons*

44. ALHR welcomes the specific inclusion of people in prisons, including women, in the Draft Baseline Study. We refer to the NGO Coalition's submission and note however, that the UPR recommendations relating to women in prisons have not been adequately addressed in the Draft Baseline Study.<sup>40</sup>

45. We emphasise that the Draft Baseline Study should do more than mention the recommendations of the Special Rapporteur on the right to health, CESCR, CAT and the UPR process. It must also discuss actions that could be taken and commitments made in relation to these recommendations.

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<sup>36</sup> Organisation for Economic Cooperation and Development, 'Country Note: Australia, Growing Unequal?: Income Distribution and Poverty in OECD Countries' (2008) at 1, accessed on 6 September 2011 at (<http://www.oecd.org/dataoecd/44/47/41525263.pdf>).

<sup>37</sup> See Australian NGO Coalition, 'Consultation on UPR Recommendations' at 20-24.

<sup>38</sup> Joint NGO Coalition for the Universal Periodic Review, 'Fact Sheet 6: Sexual and Gender Identity', 2011, accessed on 6 September 2011 at (<http://www.hrlc.org.au/files/UPR-Fact-Sheets-Consolidated.pdf>).

<sup>39</sup> Australian Human Rights Commission, 'Taking stock of Australia's human rights record: submission by the Australian Human Rights Commission under the Universal Periodic Review Process', 2010, at 6, accessed on 2 September 2011 at ([http://www.humanrights.gov.au/upr/AHRC\\_UPR\\_guide.pdf](http://www.humanrights.gov.au/upr/AHRC_UPR_guide.pdf)).

<sup>40</sup> Australian NGO Coalition, 'Consultation on UPR Recommendations' at 49-50; 52.

*Refugees, asylum seekers and migrants*

46. ALHR welcomes the Government's inclusion of these groups of people in the Draft Baseline Study. However, we believe that discussion of the human rights issues facing this group have been grossly understated. It is striking that the Draft Baseline Study largely confines its discussion to asylum seekers on Christmas Island, despite the ongoing issues in all detention centres around Australia, both in urban, regional and remote settings.
47. The discussion on refugees and asylum seekers in particular needs to acknowledge that these groups of people are the subject of fierce media and political debate, particularly in relation to offshore processing and Government policies to have asylum seekers arriving by boat processed outside of Australia. Further, without clarification of the Government's policy on offshore processing<sup>41</sup>, the Baseline Study will not be able to measure the extent to which the Government is protecting the rights of asylum seekers.<sup>42</sup> In this respect, and in light of the Government's commitment to protect the rights of asylum seekers, ALHR urges the Government to reconsider its policy of offshore processing and to process asylum seekers onshore in a more humane and cost-efficient manner.
48. ALHR notes that the abolition of mandatory detention has not been discussed, and in this respect refers the Government to the NGO Coalition's submission and the UPR recommendations relating to mandatory detention of asylum seekers.<sup>43</sup> A full and frank assessment of human rights in Australia requires the Government to acknowledge the human rights concerns of mandatory detention raised both domestically and internationally and discuss alternative options for the processing of asylum seekers. Further, whilst it is noted that indefinite and arbitrary detention is unacceptable, the Baseline Study must go further and discuss measures to address the fact that asylum seekers are still being detained arbitrarily and for indefinite periods.
49. The condition of children in detention needs to also be more adequately discussed in the Baseline Study. In this respect, ALHR notes that the Government has not fully implemented the recommendations outlined in the *Australian Human Rights Commission Report, A Last Resort? National inquiry into Children in Immigration*

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<sup>41</sup> In light of *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship* [2011] HCA 32 (31 August 2011).

<sup>42</sup> To assist the Government in its discussion of offshore processing, ALHR notes the following report: Australia Human Rights Commission, 'Immigration Detention and offshore processing on Christmas Island', 2009, accessed on 2 September 2011 at <[http://hreoc.gov.au/human\\_rights/immigration/idc2009\\_xmas\\_island.html#s2](http://hreoc.gov.au/human_rights/immigration/idc2009_xmas_island.html#s2)>.

<sup>43</sup> Australian NGO Coalition, 'Consultation on UPR Recommendations' at 32-33; Concluding Observations of the Human Rights Committee, Australia, 7 May 2009, (CCPR/C/AUS/CO/5), para. 29; Concluding Observations of the Committee on Economic, Social and Cultural Rights, Australia, 12 June 2009, (E/C.12/AUS/CO/4), para. 25; Concluding Observations of the Committee on the Elimination of Racial Discrimination, Australia, 13 September 2010, (CERD/C/AUS/CO/15-17), para. 24.



*Detention.*<sup>44</sup> This must be discussed in the Baseline Study and form the basis for inclusion as an action in the Action Plan.

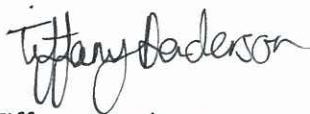
50. In relation to the issue of detention more generally, the Draft must include a discussion on the alternatives to detention, noting that the detrimental impact of detention on the health and well-being of those detained is discussed in the Draft Baseline Study. In this respect, ALHR refers the Government again to the NGO Coalition's submission and urges the Government to carefully consider the discussion on alternatives to immigration detention contained in that submission.<sup>45</sup>

## Conclusion

51. ALHR wishes to thank the Department for the opportunity to comment on the Draft Baseline Study. ALHR is of the view that the Baseline Study and Action Plan are important steps towards improving human rights standards and protections in Australia. Yet, without a Baseline Study that provides an honest and frank review of the current human rights situation in Australia, the utility and relevance of the Action Plan itself becomes endangered. As we have indicated, while the Draft Baseline Study is a good first start, ALHR strongly urges the Government to heed civil society's comments on the Draft Baseline Study when formulating the final Baseline Study. As we have indicated, ALHR considers that the current Draft Baseline Study could be improved in a number of respects to better reflect the human rights situation in Australia.
52. ALHR intends to continue its contribution to the development of the Action Plan and will welcome any opportunity to provide further comment on the Action Plan.

Yours faithfully

Stephen Keim  
President, Australian Lawyers for Human Rights  
8 September 2011



Tiffany Henderson  
Western Australia Co-Convenor  
Australian Lawyers for Human Rights

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<sup>44</sup> Australian Human Rights Commission, 'A last resort? National Inquiry into Children in Immigration Detention', 2004, accessed on 2 September 2011 at

[http://www.humanrights.gov.au/human\\_rights/children\\_detention\\_report/index.html](http://www.humanrights.gov.au/human_rights/children_detention_report/index.html).

<sup>45</sup> Australian NGO Coalition, 'Consultation on UPR Recommendations' at 34-35.