

Women's Human Rights in Australia's National Human Rights Action Plan

Over the past year and a half, Australian Lawyers for Human Rights ('ALHR') has contributed to the national consultation process to develop a National Human Rights Action Plan for Australia (or 'NHRAP' for those who love acronyms).¹ One of the issues that ALHR focussed on for inclusion and emphasis in the NHRAP is women's rights. National human rights action plans are an UN-endorsed mechanism (or 'plan of action') that, in Australia's case, outlines future action for the promotion and protection of human rights at a federal, state and territorial level.²

The concept of a NHRAP, now implemented by many countries worldwide, is in fact Australia's brainchild that emerged as an endorsed mechanism from the 1993 Vienna World Conference on Human Rights.³ Australia was also the first country in the world to elaborate on a national human rights action plan, and a second action plan was developed in Australia in 2004. While both NHRAP's emphasised Australia's commitment to human rights, both lacked comprehensive consultation and clear actions to address many of Australia's human rights issues.⁴

Australia is now in the process of developing its third NHRAP, thanks to a chief recommendation from the 2008 National Human Rights Consultation. The Consultation report, headed by Father Frank Brennan, recommended that the Federal Government develop a national plan to implement a comprehensive framework and that the Government should collaborate with civil society and the private sector in developing and implementing its national plan. The Federal Government committed itself to this recommendation in its 2010 National Human Rights Framework.⁵

The key difference between this process and the previous two NHRAP's is Australia's development of a "Baseline Study", a study in excess of 90 pages, which takes stock of Australia's human rights issues to inform what 'actions' to include in the NHRAP.⁶ The

¹ You can access ALHR's submissions to the NHRAP by searching "NHRAP" via the ALHR website: <http://alhr.asn.au/activities.html?date=month&subject=&type=> (accessed 4 June 2012).

² The UN 'Handbook on National Human Rights Plans of Action' provides an excellent overview and history of the mechanism: Office of the High Commissioner for Human Rights, *UN Handbook on National Human Rights Plans of Action* <http://www.ohchr.org/Documents/Publications/training10en.pdf> (accessed on 4 June 2012).

³ Interestingly, it was also at this same conference that the post of the UN Special Rapporteur on Women's Rights was created. See Office of the High Commissioner for Human Rights, *World Conference on Human Rights, 14-25 June 1993, Vienna, Austria*, <http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx> (accessed on 4 June 2012).

⁴ For a critique on Australia's past NHRAP's see eg. Human Rights Law Resource Centre, *Making Rights Real: A National Human Rights Action Plan for Australia Submission to the Attorney-General's Department on the development of a National Human Rights Action Plan* (February 2011), <http://www.hrlrc.org.au/files/National-Human-Rights-Action-Plan-for-Australia-HRLRC-Submission.pdf> (accessed 4 June 2012); see also Law Council of Australia, *National Human Rights Action Plan Background Paper*, http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=931A392C-DF82-8211-600A-F5D70667761F&siteName=lca (accessed 4 June 2012).

⁵ See Australian Government Attorney-General's Department, *2010 Human Rights Framework*, <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/default.aspx> (accessed 4 June 2012).

⁶ For a copy of the Baseline Study and draft NHRAP, see Australia Government Attorney-General's Department, *National Human Rights Action Plan*,

Baseline Study also becomes an important tool to measure the extent to which the Government is meeting the targets set out in its final NHRAP. The draft NHRAP released by the Federal Government last year contains 219 'actions' to improve human rights standards and protections in Australia.

The Baseline Study and subsequent draft NHRAP are, overall, a good first attempt by the Federal Government to address a spectrum of human rights issues in Australia. ALHR was, however, disappointed that many significant human rights issues were absent from the plan, for example, the rights of intersex people and the matter of child prostitution. It is important to note that women's rights featured (necessarily so) among the select human rights issues to be included in both the baseline study and draft NHRAP. However, ALHR was dissatisfied with the manner in which these human rights were dealt in the NHRAP. While the Baseline Study could not feasibly cover all human rights issues, ALHR expected the NHRAP to comprehensively outline actions, at the minimum, for protection of commonly recognised human rights issues. Obviously, women's rights must be included in this grouping, given that women constitute over half of Australia's population and women's human rights continue to be breached on a daily basis.⁷

As a result, ALHR found both the draft Baseline Study and the Draft Action Plan to have some significant gaps when it came to addressing human rights, including women's rights, issues. Over fifty individuals and organisations that provided feedback to the Federal Government during the NHRAP consultation process echoed this concern.⁸

These difficulties were reinforced at a WA Workshop on the draft Baseline Study, attended by ALHR, at which many organisations present noted that they found the discussion of human rights issues being led by the Federal Government to be confusing and inadequate.⁹ For example, participants at the WA Workshop identified sexual and reproductive rights of women as a significant omission in the Baseline Study. Participants discussed the challenges faced by many Aboriginal and Torres Strait Islander mothers who must travel away from their families, community and country to an urban location to give birth without support, due to the lack of services in remote and regional locations in Western Australia. Unfortunately, this issue was not addressed in the subsequent draft NHRAP.

The Baseline Study and draft NHRAP focus broadly on three women's rights issues: freedom from violence, gender equality and freedom from discrimination. ALHR was disappointed that actions set out in the *CEDAW Action Plan for Australian Women* were not fully incorporated into the baseline study and draft 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

<http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx> (accessed 4 June 2012).

⁷ eg. in relation to equality, pay equity, freedom from discrimination and freedom from violence: see ALHR's submission to the NHRAP (footnote 1 above), [74]-[89].

⁸ To see these submissions go to Australian Government Attorney-General's Department, *Public Submissions on the Draft National Human Rights Action Plan*,

<http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/Public-Submissions-on-draft-National-Human-Rights-Action-Plan.aspx> (accessed 4 June 2012).

⁹ You can access a copy of the workshop report from Human Rights Law Resource Centre's website (who hosted the national workshops) on the *National Human Rights Action Plan* at <http://www.humanrightsonline.org.au/nhrap/events> (accessed 4 June 2012).

recommendations on women's human rights in Australia.

ALHR was also disappointed that many of the women's rights recommendations accepted by Australia at its 2011 UN Universal Periodic Review ('UPR')¹⁰ were not incorporated into the draft NHRAP. For example, UPR recommendation 86.52 called for the strengthening of the Federal *Sex Discrimination Act* and for consideration to be given to the adoption of temporary special measures as recommended by CEDAW. The 2010 *CEDAW Concluding Comments* called for temporary special measures particularly to increase participation of women in political and public life, including Indigenous women and women from ethnic minorities.¹¹

ALHR encouraged the Government to incorporate these recommendations into the final NHRAP by implementing the *CEDAW Action for Australia Women* initiatives targeted at achieving gender equality in public life. For example, one initiative requires the Federal Government to allocate funding to the Australian Institute for Company Directors to meet at least 25% of demand for training and to establish within this process targets for scholarships to support training for Aboriginal and Torres Strait Islander women, women with disabilities, and culturally and linguistically diverse women, to improve their representation on public and private boards.¹²

ALHR was also disappointed that while the Australian Government accepted in part UPR recommendation 86.99, which relates to pay equity and comprehensive child care policy, there were no action items relating to this in the draft NHRAP. ALHR directed the Government 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 and strongly recommended that indicators for the implementation of this decision be included in the NHRAP.

ALHR's other significant criticism of the draft NHRAP was its frequent use of 'ongoing' as a performance indicator for many of its 219 actions. 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. For example, Action 101 holds that "States and Territories will retain legislation to criminalise violent conduct and sexual assault together with mechanisms to prosecute and punish perpetrators" with "ongoing" marked as the performance indicator. Unfortunately, without clear timelines and an indicator in which to achieve this practical action, there is no proper measure by which to hold the Federal Government accountable.

The final version of the NHRAP is due out later this year. It is unclear yet to what extent the Federal Government has taken on board civil society's recommendations for improving the NHRAP. Whatever the final version may be, there is no doubt that it will provide some tangible measure of the Federal Government's commitment to improving and protecting human rights, including women's rights, in Australia. Its success will be built not only upon the way in which it implements its plan, but also on whether the Government has properly identified clear, concise actions to address many of the human rights issues that exist in

¹⁰ The Universal Periodic Review is a procedure in the United Nations in which every country's human rights progress is examined every four years. Australia was assessed and reported on in 2011.

¹¹ *CEDAW Concluding Comments* 2010 at paragraph 27.

¹² *CEDAW Action Plan*, Action Plan Point 3, p 6. You can access a copy of the CEDAW Action Plan at: YWCA Australia, *Our CEDAW Work*, <http://www.ywca.org.au/advocacy-policy/our-united-nations-work/cedaw> (accessed 4 June 2012).

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**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 (including in WA). You can find out more about ALHR at www.alhr.asn.au.*