



**public interest**  
ADVOCACY CENTRE LTD

## **Human Rights Action Plan for Australia**

**11 February 2011**

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# Introduction

## The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## PIAC's work on human rights

Much of PIAC's current and previous substantive work involves human rights issues. This includes work on privacy, discrimination, freedom of information, detention, government and democracy, and access to justice. As such, PIAC has extensive experience in the impacts of laws, policies, programs and conduct on human rights and on their social and economic situation. A significant number of PIAC's casework clients have direct experience of what it means to have their human rights infringed or not respected.

PIAC has provided responses to the various inquiries conducted across Australia in the last five years into human rights protection. For example, PIAC conducted a range of community consultations for the National Human Rights Consultation and worked closely with its diverse networks to encourage those least likely to respond to the consultation to take part. This included working with people experiencing homelessness, people with mental illness, Indigenous people, prisoners and former prisoners, older Australians, people with disability, and migrant women.

PIAC has also focused specifically on human rights training and policy development for a number of years. Since 2003, PIAC has had a project, *Protecting Human Rights in Australia*, as a core area of its work. This has been a three-stage project:

- the development of a human rights education kit, *Protecting Human Rights in Australia: An Education Kit*, to provide members of the Australian community with basic information about human rights and about how those rights are protected, the extent of and gaps in the protection, and to illustrate the importance of human rights through case studies of instances of human rights being abused or not protected;
- the development and delivery nationally of a *Protecting Human Rights in Australia* 'train-the-trainer' program. PIAC conducted multiple training workshops in every state and territory of Australia, targeting community educators and other workers with the capacity to use the materials with their own communities or members. PIAC delivered workshops to over 800 trainers, community workers and educators across Australia; and
- the promotion of community discussion and political engagement with human rights, with a focus on achieving comprehensive human rights protection in Australia.

In 2004, PIAC commented on the last *Draft National Action Plan on Human Rights*.<sup>1</sup> The recommendations in that submission addressed legislation and policies the Government of the time introduced that eroded human rights for asylum seekers and Australian residents. The policy areas described in the 2004 PIAC submission should also be considered as part of the current process to develop actions for the National Plan. The recommendations focused on:

- improvements to the effectiveness of the justice system through support for Legal Aid Commissions and the Community Legal Centre network;
- addressing Indigenous disadvantage by supporting self-determination, including realising rights to Native Title;
- addressing the human rights of people with disabilities through the development of disability standards;
- protecting children, particularly in immigration detention centres;
- improving the family law system by ensuring individuals have legal representation;
- promoting human rights internationally by supporting and signing United Nations conventions and optional protocols;
- protecting liberty, security and dignity by reviewing laws which allow individuals to be arbitrarily detained and restrict the rights of individuals detained using anti-terrorism legislation;
- delivering equality for gay and lesbian communities; and
- providing comprehensive human rights protection through development and application of a Charter of Human Rights for Australia.

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<sup>1</sup> Simon Moran, *Submission on the Draft National Action Plan on Human Rights*, PIAC (2004).

# Response to the National Human Rights Action Plan Background Paper

## Support for the National Rights Action Plan

PIAC welcomes the opportunity to comment on the process for developing the National Human Rights Action Plan for Australia (Action Plan).<sup>2</sup> PIAC supports the development and implementation of an Action Plan providing it remains action oriented and incorporates transparent accountability mechanisms for Government and its agencies. This submission provides suggestions on the direction the Plan could take, priority areas for actions and comments on the governance of the planning and implementation process.

The Background Paper notes that Australia proposed the adoption of Action Plans to the United Nations in 1993.<sup>3</sup> Australia was also the first to submit an Action Plan, presenting it in 1994 to the 50<sup>th</sup> session of the Commission on Human Rights.<sup>4</sup> A new Action Plan will continue this tradition of providing a leading example and will support the Government's positive commitment to re-engage in the international community.<sup>5</sup>

There are many claims made about the benefits for the nation from the process of developing actions and implementing the plan.<sup>6</sup> In Australia it is difficult to assess the benefits, as there is no public record of an evaluation of the 1993 or 2004 plans. Monitoring and review were not built into these plans; this oversight should be corrected in the drafting and implementation of the current plan.<sup>7</sup>

The objectives of planning for organisations, whether government agencies or corporations have common themes to those described in the United Nations *Handbook*; that is, to demonstrate commitment and leadership, set priorities and achievable targets, and improve the linkages within policy and programs.<sup>8</sup> Sweden provides some evidence on the value of action plans in its review of its first Action Plan, concluding that:

...the plan has led to increased awareness among those directly concerned at the Government Offices and established a foundation for better coordination between departments and ministries. This in itself is an argument in favour of continuing to produce time-limited action plans for human rights.<sup>9</sup>

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<sup>2</sup> Attorney-General's Department, Australian Government, *A new National Human rights Action Plan for Australia - Background Paper* (2011).

<sup>3</sup> Ibid.

<sup>4</sup> Office of the United National High Commissioner for Human Rights, *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10, United Nations (2002).

<sup>5</sup> The Hon Robert McClelland MP, Attorney-General, 'Launch of Australia's *Human Rights Framework*', (Speech delivered at the National Press Club of Australia, Canberra, Wednesday 21 April 2010).

<sup>6</sup> Attorney-General's Department, above n 2, 2.

<sup>7</sup> Office of the United National High Commissioner for Human Rights, above n 4, 25.

<sup>8</sup> Office of the United National High Commissioner for Human Rights, above n 4, 3.

<sup>9</sup> Ministry of Justice Sweden, Summary of the Swedish Government communication (2005.06:95), *A National Action Plan for Human Rights 2006-2009*, Annex 1 – Recommendations for the evaluation

The National Human Rights Consultation concluded that Australians had a poor understanding of human rights<sup>10</sup> and in the words of the Attorney-General, ‘we can do better’<sup>11</sup>. As in Sweden, the Human Rights Action Plan has the potential to achieve a greater understanding of human rights in the Australian community and practical improvements in policy and program delivery.

## Development Process

PIAC supports the Government’s application of the United National *Handbook on National Human Rights Plans of Action (Handbook)* as a guide in developing the Action Plan.<sup>12</sup>

PIAC welcomes the community consultation that is built into the planning process and the substantial period of time to consider the draft plan. The proposed time-frame listed in the Background Paper allows four months for the community to comment on the Baseline Study and Draft Action Plan.<sup>13</sup> This should allow time for community consultation and peak organisations to consult with their members.

PIAC has concerns about the governance of the project and ongoing monitoring and evaluation of the Plan. The primary responsibility for the Action Plan should remain, as the Handbook describes, always with the government. However the committee of senior officials from Government Departments<sup>14</sup> as the only mechanism to oversee the Plan is not in keeping with the process described in the Handbook.<sup>15</sup>

The Handbook describes a ‘National Coordination Committee’ as essential to the development and monitoring process. The role of the Committee is to ‘facilitate communication with civil society’, and to help identify short-comings and obstacles and propose remedies.<sup>16</sup> Ongoing involvement is needed, particularly as the Baseline Study is examined and measures and indicators are decided upon. A committee with broad-based membership, as recommended in the Handbook,<sup>17</sup> can assist in establishing realistic measures that have community support. It can also identify gaps in data and recommend solutions by identifying new data collection mechanisms.

It would be a lost opportunity if the Action Plan followed the example in NSW where government agencies selected their own indicators without community consultation. The NGO sector has witnessed contradictions within the plan that, at best do nothing to improve the situation of disadvantaged population groups; and in some cases make life more difficult.<sup>18</sup>

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of the first action plan, Excerpt from: *A good beginning, but only a beginning, Comments on and evaluation of the national action plan for human rights*, in Swedish, (dnr Ju2004/6673/D), 89 (2005).

<sup>10</sup> Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer, *National Human Rights Consultation Report*, Attorney General’s Department, Australia (2009) Summary xvii

<sup>11</sup> The Hon Robert McClelland MP, above n 5.

<sup>12</sup> Attorney-General’s Department, above n 2, 3.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Office of the United National High Commissioner for Human Rights, above n 4, 45.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> NCOSS, *Which Way to Social Justice*, State Plan Conference Report (2008).

## Initial views on potential actions for inclusion in the Action Plan

PIAC supports the comments in the Background Paper and advice in the United Nations Handbook that an action plan should be ‘action-orientated’ not simply a compilation of ongoing government programs that are renamed ‘human rights’ programs.<sup>19</sup> The plan should briefly evaluate government initiatives and identify the shortcomings in the protection of human rights in Australia, and focus on the means by which these will be addressed. The focus should be on future plans and activities that will complement existing programs or new activities that move Australia towards meeting its international law obligations.

The Australian Government has several reliable sources from which it can draw to draft the Action Plan. While consultation is important and should be taken into account in the first and subsequent drafts of the Action Plan, PIAC agrees with the position in the Background Paper that the plan and its actions should not duplicate the 2009 *National Human Rights Consultation*.<sup>20</sup> The consultation was comprehensive and the recommendations provide a substantial list of recommendations that could be incorporated into an Action Plan, including the need to consider how economic, social and cultural rights will be protected.<sup>21</sup>

PIAC notes that the *Human Rights Framework* includes an education program and funds have been allocated to the Australian Human Rights Commission and the community sector for this purpose.<sup>22</sup> The Action Plan should support this initiative and include an ongoing system to ensure human rights are included in the Australian Public Service training so that human rights best practice operates in public administration. The recommendations regarding education in the *National Human Rights Consultation Report* provide details for actions that would fulfil these objectives.<sup>23</sup>

PIAC wishes to draw attention to the Attorney-General’s commitment to sign the *Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*<sup>24</sup> and Recommendation 24 of the *National Consultation Report*<sup>25</sup> to introduce legislation to protect rights in this Protocol. The details for drafting the actions should be based on the recommendations in the 2008 report on implementing the Protocol in Australia by Professor Richard Harding and Neil Morgan.<sup>26</sup> The goals of the Action Plan should focus on:

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<sup>19</sup> Attorney-General’s Department, above n 2, 4. Office of the United National High Commissioner for Human Rights, above n 4, 73.

<sup>20</sup> Attorney-General’s Department, above n 2, 4.

<sup>21</sup> Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer, above n 11, Recommendation 5, xxx.

<sup>22</sup> The Hon Robert McClelland MP, above n 5.

<sup>23</sup> Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer, above n 11, Recommendation 2, xxix.

<sup>24</sup> The Hon Robert McClelland MP, above n 5.

<sup>25</sup> Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer, above n 11, Recommendation 24, xxxv.

<sup>26</sup> Professor Richard Harding and Neil Morgan, *Implementing the Optional Protocol to the Convention Against Torture: Options for Australia* (2008) Australian Human Rights Commission <http://www.humanrights.gov.au/human%5Frights/publications/opcat/index.html> at 9 February 2011.

- finalising negotiations with State and Territory Governments to prepare a national interest analysis to the Joint Standing Committee on Treaties; and
- assisting the State and Territory Governments to meet their monitoring obligations under this Protocol.

The announcement by the Attorney-General<sup>27</sup> of the review and consolidation of the anti-discrimination law as part of the *Human Rights Framework* is very welcome. The actions required to realise this commitment should be included in the Action Plan. The action should be drafted to achieve the following objectives:

- improve the promotion and protection of human rights in federal law;
- increase practical access to discrimination law for people the Act is intended to benefit;
- improve the efficacy of the law in resolving individual complaints of discrimination as well as systemic discrimination;
- improve protection from discrimination in relation to specific characteristics and aspects of public life;
- improve access by creating a simpler legislative test for discrimination and provide for intersectional discrimination as a specific ground for discrimination;
- provide a clear intention that the Act is to implement Australia's relevant international human rights obligations and promote substantive equality; and
- ensure the Act operates so that other legislation is interpreted in a non-discriminatory way.

The action should also include ongoing consultation with relevant stakeholders, including specialist community legal services.

In drafting the Action Plan, particular regard should be had to the reports of the United Nations Committees which examine Australia's progress in meeting its commitment to international treaty obligations.<sup>28</sup> The 'Concluding Observations' from the Committees take into account and reflect on both the Government and non-government sector periodical reports to the review process. The observations provide an independent perspective on Australia's progress. This provides a starting point for the Action Plan's priorities. Attached is a summary of United Nations Committees recommendations made in their Concluding Observations, listed under subject areas. The list was drafted by the Human Rights Law Resource Centre.

Judicial decisions in the High Court, reports from the Australian Human Rights Commission and other sources that identify failings of Australian law to protect human rights should be reviewed in the process of setting priorities for the Action Plan. There should be an audit of these cases and legislation with an action that describes a legislative program to amend the legislation for compliance with Australia's international law obligations.

The Attorney-General has made a commitment to review the Framework, of which the Action Plan is an important part, in 2014.<sup>29</sup> The objectives, timeframe and responsibility for the review should be included in the Action Plan, and it should include an examination of how the Framework has improved human rights in the absence of a Charter of Human Rights, as

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<sup>27</sup> The Hon Robert McClelland MP, above n 5.

<sup>28</sup> See Appendix for summary of Committee recommendations.

<sup>29</sup> Ibid.



recommended in the *National Human Rights Consultation Report*.<sup>30</sup> It would be a useful exercise to determine whether Australia is more willing to accept legislation and test the Report's conclusion that:

Other improvements to the existing human rights protections would continue to be defective in the absence of a Human Rights Act. Such an Act would also serve as an important statement of Australian values and would reinforce our national identity.<sup>31</sup>

Finally, adequate resources need to be allocated to government agencies that develop and monitor the Action Plan, community members that take part in this process and agencies that are responsible for meeting the objectives in the Action Plan.

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<sup>30</sup> Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer, above n 11, Recommendation 18, xxxiv.

<sup>31</sup> Ibid.

# Recommendations

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## **Recommendation 1 – Population groups**

*Priorities areas to consider for the Action Plan include protection on human rights of Indigenous people, people with disabilities, children, asylum seekers and gay and lesbian communities.*

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## **Recommendation 2 – Access to justice**

*Objectives in the Action Plan should aim to achieve improvements to the effectiveness of the justice system, access to representation in the family law system, supporting United Nations conventions and optional protocols and review of anti-terrorism laws.*

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## **Recommendation 3 – Evaluation and review**

*The Action Plan should determine responsibility for and build into the actions a process for evaluation and review and public reporting of the results of that review. The review should include an assessment of how Australia has fared without a dedicated human rights Act or Charter as recommended in the National Human Rights Consultation Report.*

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## **Recommendation 4 – Governance of the planning process**

*A National Coordination Committee should be established to advise and oversee the planning process and evaluation, and include its members from civil society.*

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## **Recommendation 5 – National Human Rights Consultation Report**

*The Action Plan should include actions arising from the recommendations in the National Human Rights Consultation Report.*

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## **Recommendation 6 – Education**

*The Action Plan should include an ongoing education component using the National Human Rights Consultation Report as a guide for priorities.*

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## **Recommendation 7 – Convention Against Torture**

*The Action Plan should set an objective for Australia to sign and become compliant with the Optional Protocol to the Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.*

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## **Recommendation 8 – Judicial decisions**

*In drafting the Action Plan, priorities should be drafted following a review of relevant judicial decision and other sources that indicate gaps in human rights protection in Australian law.*

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## **Recommendation 9 – Funding**

*Adequate funding should be provided to government agencies to develop the plan, undertake the actions and meet the objectives as set out in the Action Plan in the given timeframe.*

# Appendix

## Recent UN treaty body recommendations in respect of Australia

The following list is a summary of concluding observations made by United Nations Committees in response to Australia's periodical reports on the progress Australia had made towards meeting its commitments under specific conventions. The list is drawn from material compiled by the Human Rights Law Resource Centre.

### Effective protection of rights

- Adopt Human Rights Act (or similar) (8, ICCPR; 25, CEDAW; 2, CAT).
- Consolidate of federal anti-discrimination law. (25, CEDAW).
- Grant Australian Human Rights Commission statutory powers to effectively monitor international treaty obligations (5, CAT). Strengthen the mandate of Commission to cover all Economic, Social and Cultural Rights, and provide it with adequate human and financial resources (13, CESCR).
- Federal Government should take a greater role in assisting consistent implementation of CEDAW by State and Territory Governments (17, CEDAW).

### Treaty obligations

- Withdraw reservations to Art 10(2)(a) and (b) and (3); Art 14(6) and Art 20 to ICCPR (9, ICCPR).
- Fulfill obligations under First Optional Protocol of ICCPR– and grant victims reparation (10, ICCPR).
- Adopt International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearances (49, CEDAW).
- Ratify Optional Protocol to CAT (CAT).
- Withdraw Australia's reservation to art 37(c) of the CRC (CAT, 45).

### Counter- Terrorism

- Terrorism legislation should be made compatible with ICCPR:
  - definition of 'terrorist act' in the Criminal Code Act 1995 too vague (11ICCPR). Limit definition of terrorism to indisputably terrorist acts (6, CAT);
  - amend burden of proof as it is impacting on presumption of innocence (11, ICCPR);
  - 'Exceptional circumstances' to rebut the presumption of bail in terrorism cases should be defined in the Crimes Act (11, ICCPR);
  - repeal powers of ASIO to detain without charge or access to a lawyer for 7 days plus (11, ICCPR and 6, CAT).
- Ensure uniform legal safeguards of access to independent doctor and lawyer and right to contact families from the outset (7, CAT).
- Repeal powers of the AFP to arrest and detain without a warrant for an indefinite period and establish maximum period of pre-charge detention as recommended by HREOC (7, CAT).
- Appoint a National Security Legislation Monitor with mandate to review counter-terror laws and their compliance with human rights. (7, CAT).

- Concerned about collection of biometrics for visa applicants from 10 countries. Ensure counter-terrorism measures do not discriminate in purpose or effect (12, CERD).
- Undertake sensitisation campaigns against stereotypes associating certain groups with terrorism (12, CERD).

## **Indigenous Rights**

- Increase efforts to effectively consult with Indigenous people in decisions that impact on them and establish adequately resourced national Indigenous representative body (13, ICCPR; 15, CESCR). Provide the National Congress of Australia's First Peoples with adequate resources to become fully operational (15, CERD).
- Have genuine consultation, engagement and partnership with Indigenous people, and ensure Government Actions affecting Aboriginal communities respect human rights and conform with the RDA (16, CERD). Enhance mechanisms for effective consultation with Indigenous peoples around all policies affecting their lives and resources (18, CERD).
- Redesign the Northern Territory intervention in consultation with Indigenous people and ensure it is consistent with RDA and ICCPR (14, ICCPR15, CESCR). Fully reinstate the RDA to challenge and provide remedies for racially discriminatory NT 'Emergency Response' measures (16, CERD).
- Grant compensation to Stolen Generations. (15, ICCPR; 26, CERD).
- Improve operation of native title system (i.e. in relation to rules of evidence, cost, complexity) (16, ICCPR; 32, CESCR). Review the requirement for the high standard of proof in native title cases (18, CERD).
- Strengthen preservation of Indigenous languages and culture (33, CESCR).
- Preserve and promote bilingual education at schools (33, CESCR).
- Reform the Copyright Act to extend its legal protection to Indigenous people and develop a special intellectual property regime to protect the collective rights of Indigenous people. Also open a registry of intellectual property rights of Indigenous people (33, CESCR).
- Address the human rights violations in the 2007 *Little children are sacred* report, bearing in mind the 2008 report of the NT Intervention Response Review board (15, CESCR).
- Ratify ILO Convention No 169 concerning Indigenous and Tribal People's in Independent Countries (15, CESCR).
- Amend constitution to recognise First Nations Peoples and consider negotiation of a treaty (15, CERD).
- Programs to reduce the length and rate of Indigenous incarceration, including non-custodial measures and diversion programs, review relevant criminal laws, assess sentencing policies, increase use of Indigenous courts and implement social reinvestment strategies, and incorporate customary law into the criminal justice system, including community dispute mechanisms (28, CAT).
- Strengthen funding of Aboriginal legal aid and establish clear funding responsibilities between the federal and state governments (37, CAT).
- Take legislative or administrative measures to prevent acts of Australian corporations that negatively impact on the rights of Indigenous people (especially in the extractive sector) (13, CERD).
- Increase efforts towards meaningful reconciliation with Indigenous people (15, CERD).
- Address the high level of disadvantage and social dislocation of Aboriginal Australians in remote communities in NT (16, CERD).
- Increase funding for Aboriginal legal aid and strengthen training for law enforcement personnel and the legal professional for culturally appropriate services (19, CERD).

- Provide sufficient resources to address the social and economic factors underpinning Indigenous contact with the criminal justice system (20, CERD).
- Continue and increase the use of Indigenous courts and conciliation mechanisms, diversionary and prevention programs and restorative justice (20, CERD).
- In consultation with Indigenous communities take immediate steps to review the recommendation of the Royal Commission into Aboriginal Deaths in Custody and implement the recommendations that remain relevant (20, CERD).
- Implement the measures outlined in the National Indigenous Law and Justice Framework (20, CERD).
- Allocate adequate resources for a new national approach to preserve Indigenous languages and hold a national inquiry into the issue of bilingual education for Indigenous people (21, CERD).
- Provide adequate opportunities for national minorities to use and teach their own language (21, CERD).
- Ensure culturally appropriate public service delivery to address Indigenous socio-economic disadvantage (22, CERD).

### **Housing/ Homelessness**

- Take steps to ensure homeless persons are not deprived of rights because of social and economic conditions (18, ICCPR).
- Take effective measures on the right to adequate housing to address homelessness – implement recommendations of the Special Rapporteur on the Right to Adequate Housing in his report of mission to Australia (26, CESCR).
- Revise and amend laws that criminalise poverty and homelessness (14, CAT).

### **Deportation/extradition to torture or death**

- Take steps to ensure persons are not sent to places where there are substantial grounds to believe the person may be subject to death or torture or cruel, inhumane or degrading treatment or punishment (19, ICCPR; 22, CAT).
- Legislate for and take other steps to ensure persons are not extradited when they may face the death penalty, and that AFP does not give assistance where death penalty may be imposed. Revoke residual power of Attorney-General to allow extradition when death penalty may be imposed (20, ICCPR).
- Amend legislation to enable refusal of extradition or mutual assistance requests if there are grounds to believe the person may risk torture or other forms of cruel, inhuman or degrading treatment/punishment (22, CAT).

### **Use of force by police / police complaints**

- Eradicate all forms of excessive use of force by law enforcement officials (21, ICCPR).
- Bring proceedings against alleged law enforcement perpetrators (21, ICCPR).
- Increase training on use of force and principles of proportionality (21, ICCPR).
- Ensure TASERS are only used when greater force would have been appropriate (21, ICCPR). Take steps to consider relinquishing the use of TASERS (44, CAT).
- Bring legal provisions and policies on use of force in line with UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials (21, ICCPR).
- Provide adequate reparation to victims (21, ICCPR).

- Establish an independent investigation mechanism into complaints concerning ill-treatment and excessive use of force by law enforcement officials, and to investigate deaths associated with the police (CAT).

### **Women/ Domestic Violence**

- Strengthen efforts to eliminate domestic violence (especially for Indigenous women and children). Implement the National Plan of Action to Reduce Violence against Women and their Children (17, ICCPR; 22, CESCR).
- Increase funding in relation to domestic violence shelters and support services (ICCPR; 22, CESCR).
- Adopt national legislation re domestic violence and implement and fund National Plan of Action to Reduce Violence against Women and their Children, including a mechanism for independent monitoring (29 CEDAW).
- Develop strategies to minimise homelessness following domestic violence, and give women and children appropriate ongoing accommodation and integrated support (29, CEDAW).
- Legislate to criminalise acts of domestic violence and prosecute perpetrators (29, CEDAW). Take steps to effectively implement and enforce laws on violence against women (13, CAT).
- Adopt specific strategies within the National Plan of Action to address violence against Indigenous women – especially funding Indigenous women’s legal services (41, CEDAW).
- Intensify efforts to prosecute acts of domestic violence against migrant women (45, CEDAW).
- Increase efforts to prosecute for domestic violence (22, CESCR).
- Strengthen the implementation of the principle of equal pay for equal value, and consider implementing the recommendations of the Senate Legal and Constitutional Affairs Committee in relation to amending the Sex Discrimination Act 1984 (17, CESCR).
- Ensure access to sexual assault services for women in rural and remote areas, especially access to crisis accommodation, and particularly for Indigenous women and women with disabilities (13, CAT).

### **Trafficking**

- Strengthen measures to prevent and eradicate trafficking, adopt a comprehensive strategy to protect all victims regardless of participation in criminal proceedings against perpetrators (22, ICCPR). Adopt a human rights framework in the National Plan to Eradicate Trafficking in Persons (31, CEDAW). Ensure offence of trafficking includes all the definition of trafficking in the Protocol to Prevent, Suppress and Punish Trafficking in Persons (12, CAT).
- Take steps for better coordination among government agencies, and review the return and reintegration of trafficked persons (31, CEDAW).
- Review the provision of accommodation for trafficked women to offer more options and reduce stress for victims (31, CEDAW).
- Adopt a national strategy from a human rights perspective to tackle trafficking and address exploitation arising from it (23).

### **Prostitution**

- Adopt measures to discourage women and girls entering into prostitution and support women who wish to discontinue prostitution (33, CEDAW).
- Develop effective strategies to address demand for prostitution (33, CEDAW).

## Immigration

- Consider abolishing mandatory immigration detention (23, ICCPR; 24, CERD; 39 CAT).
- Implement Australian Human Rights Commission 2008 Immigration Detention Report recommendation, including repealing mandatory immigration detention and closing Christmas Island detention centre (25, CDESCR and 23, ICCPR). Other recommendations included:
  - legislate for minimum standards in detention;
  - accede to Optional Protocol to CAT and establish regular inspections of places of all detention;
  - amend Migration Act so immigration detention occurs only exceptionally, and is minimal, reasonable and proportionate. Ensure decision to detain is subject to prompt court review, and have periodic independent reviews on ongoing need to detain individuals;
  - ensure immigration staff are trained in human rights;
  - current mainland detention facilities should be redeveloped;
  - detainees should be given adequate and independent health care, including mental health care. Detainees should also have access to appropriate recreation, external excursions and physical activities, access to reading material and educational opportunities;
  - policies on use of restraints should be reviewed to ensure it is only used when absolutely necessary following a risk assessment;
  - keep each detainee frequently updated and informed about detention options available to them;
  - ensure interpreters available where necessary and inform detainees about how they can access interpreters;
  - review operation of s 501 of the Migration Act (cancellation of visa on character grounds) urgently, to exclude long-term permanent residents;
  - make greater use of community detention;
  - repeal provisions of Migration Act relating to excised off-shore places;
  - amend immigration law to comply with Convention on Rights of the Child – especially to presume against detention (as a measure only of last resort), to ensure court assesses whether there is a need to detain within 72 hours of detention;
  - appoint independent guardian for unaccompanied children.
- Ensure immigration legislation complies with ICCPR (23, ICCPR).
- Remove the suspension on processing visa applicants from Afghanistan and ensure standardised asylum assessment and review regardless of country of origin or mode of entry (24, CERD).
- Develop appropriate reception arrangements, especially for children (24, CERD).
- Take steps to ensure stateless persons are not indefinitely detained (11, CAT).
- Ensure proper protection so non-refoulement obligations don't rest on the Minister's discretion (15, CAT). Ensure visa cancellations under s 501 of the Migration Act don't result in a person being sent to a place where they face a serious risk of torture or the death penalty (21, CAT).
- Retable the Migration Amendment (Complementary Protection) Bill (15, CAT).
- Abolish off-shore excision from the migration zone (repeal the 2001 Migration Amendment (Excision from Migration Zone) Act). (16 and 40, CAT). Ensure all detainees in offshore detention are provided with adequate legal assistance and full access to judicial review (16,

- CAT). Repeal s 494AA of the Migration Act which bars legal proceedings against the lawfulness of detention of offshore entry (40, CAT).
- Enhance system of pre-removal clearance for failed asylum seekers to ensure persons not deported to places of torture (18, CAT).
  - Take steps to codify minimum standards based on international human rights obligations for the conditions and treatment of persons in immigration detention (32, CAT).
  - Retable the Migration Amendment (Immigration Detention Reform) Bill and ensure the right to prompt judicial review of detention – applying to both onshore and offshore detention (39, CAT).
  - Ensure the ‘New Directions in Detention’ policy, that detention is used as a last resort and for the shortest time possible, is implemented – and guarantee by law a maximum length of immigration detention (41, CAT).
  - Ensure prompt access to independent and regular monitoring of all detention facilities; prompt access to health care (including mental health care) and ensure adequate detention conditions (41, CAT).
  - Ensure children are not held in immigration detention – especially offshore. Ensure periodic judicial review by a court or tribunal on children in detention, clarify which authority holds responsibility for protecting their rights and appoint an independent guardian for unaccompanied children (43, CAT).

### **Access to justice**

- Ensure equality in access to justice, including by providing adequate legal aid for Indigenous people, including for interpreters (25, ICCPR).

### **Education**

- Adopt a comprehensive plan for human rights education (27, ICCPR).
- The National Judicial College of Australia should specifically include CEDAW and the Optional Protocol in continuing education programs (23, CEDAW).
- Allocate resources to encourage females to study/ pursue professional development in areas traditionally dominated by men (37, CEDAW).
- Ensure access to quality education and training for Indigenous women (41, CEDAW).
- Improve the educational system for Indigenous people, including in remote areas (31, CESC).
- Provide human rights education on ESCR (34, CESC).
- Ensure immigration detention officials, the AFP, corrections personnel and the judiciary are aware of provisions of the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010 and CAT (25, CAT).
- Ensure health professionals have mandatory human rights training (26, CAT).

### **Equality**

- Adopt comprehensive federal legislation on equality (12, ICCPR).
- Ensure comprehensive federal protection against discrimination and consider expanding the mandate of the Sex Discrimination Commissioner to address all issues of gender equality. (21, CEDAW).
- Adopt a federal hate speech law (26, ICCPR).
- Amend the Migration Act and Disability Discrimination Act 1992 to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice (16, CESC).



- Assess situation of women with disabilities (43, CEDAW).
- Address abuse and violence suffered by women with disabilities in institutions or supported accommodation (43, CEDAW).
- Legislate nationally to prohibit the sterilisation of girls (including those with disabilities) and adult women with disabilities except with their informed consent– unless there is a serious threat to life or health (43, CEDAW).
- Adopt legislation providing entrenched protection against racial discrimination (10, CERD).
- Adequately fund and staff the Australian Human Rights Commission and appoint a full time Race Discrimination Commissioner (11, CERD).
- Develop and implement an updated comprehensive multicultural policy, and strengthen the race and cultural dimensions of the Social Inclusion Agenda (especially with adequate resources) (14, CERD).

### **Torture**

- Ensure evidence obtained through torture is never admissible (38, CAT).

### **Criminal justice**

- Ensure independent monitoring and inspection in places where people deprived of liberty anywhere in Australia, including offshore detention facilities (8, CAT).
- Establish a maximum length of custody and pre-trial detention at federal and state and territory level that complies with human rights (9, CAT).
- Ensure uniform legal safeguards of access to independent doctor from the outset. Establish specific independent monitoring and accountability to ensure health services in detention (10, CAT).
- Take measures to reduce over-crowding in correctional facilities, particularly in WA, SA, Victoria and NSW (29, CAT).
- Amend Queensland's Powers and Responsibilities Act 2000 and amend the Queensland Police Service's operational procedures manual to reinforce the principle of arrest as a last resort (29, CAT).
- Take measures to ensure the transportation of prisoners and detainees in all States and territories comply with international human rights standards (34, CAT).

### **Sentencing**

- Abolish mandatory sentencing in Western Australia and Northern Territory (30, CAT).

### **Children**

- Ensure children in criminal justice system are treated consistently with the ICCPR and UN Rules – address this within child protection framework (24, ICCPR).
- Consider raising the minimum age of criminal responsibility from 10 to an internationally acceptable level (45, CAT).
- Take steps to reverse the increase in numbers and length of stay of juveniles in detention (both sentenced and on remand) (45, CAT).
- Ensure all jurisdictions in Australia apply juvenile justice legislation to under 18s (45, CAT).

### **Special/ Temporary measures**

- Adopt temporary measures to increase number of women in political and public life (i.e. compulsory targets and quotas) – with particular focus on Indigenous women and women with disabilities (27, CEDAW).

- Adopt temporary special measures to improve Indigenous women's enjoyment of all human rights (41, CEDAW).

### **Race hate offences**

- Legislate to criminalise the dissemination of racist ideas, incitement to racial hatred/discrimination and the provision of assistance to racist activities (17, CERD).
- Intensify efforts to combat racially motivated violence – require police to collect data on the nationality and ethnicity of victims of crime, and require judges, prosecutors and the police to consider the motive of racial hatred an aggravating circumstance (23, CERD).

### **Implementation of ICESCR**

- Enact comprehensive legislation to give effect to all economic, social and cultural rights across all Australian jurisdictions (11, CESCR).
- Consider the introduction of a Federal Charter of Human Rights that includes protection of ESCR (11, CESCR).
- Guarantee effective judicial remedies for the protection of ESCR (11, CESCR).
- Enact federal legislation to protect the right to equality and non-discrimination on all prohibited grounds (11, CESCR).

### **Overseas aid**

- Increase development assistance to 0.7 of GDP (12, CESCR).

### **Right to work / Employment**

- Address barriers to right to work faced by Indigenous people, asylum seekers, migrants and people with disabilities, including measures to protect them from exploitation (18, CESCR).
- Repeal provisions of the Building and Construction Industry Improvement Act 2005 that imposes penalties for industrial action (19, CESCR).
- Lift restrictions on 'pattern bargaining', the pursuit of multi-employer agreements and matters that are not 'permitted', and remove the secret ballot requirements for workers who wish to take industrial action (19, CESCR).
- Develop a National Pay strategy and monitor pay gap mechanisms (39, CEDAW).
- Adopt appropriate legislative measures and a preventive strategic plan to combat sexual harassment in the workplace (39, CEDAW).
- Increase amount of paid maternity leave and provide superannuation (39, CEDAW).
- Develop comprehensive child-care policy and increase the supply of affordable care (39, CEDAW).
- Take targeted measures to address barriers to workplace participation of migrant women and ensure they have access to job training and placement services, not limited to traditional employment areas (45, CEDAW).

### **Social security**

- Ensure universal coverage of the social security system to include asylum seekers, newly arrived migrants and Indigenous people (20, CESCR).
- Ensure all social security benefits enable recipients an adequate standard of living (20, CESCR).
- Review conditions such as 'mutual obligations' in the welfare to work program and 'quarantining' of welfare payments under the Intervention that may have a punitive effect on disadvantaged and marginalised families, women and children (20, CESCR).

- Ratify ILO Convention No 102 on minimum social security standards (20, CESCR).
- Adopt paid maternity and paternity schemes and consider ratifying ILO Conventions No 103 concerning Minimum Standards of Social Security (1952) and No 183 concerning the Revision of the Maternity Protection Convention (Revised) (2000) (21, CESCR).

### **Poverty**

- Develop a comprehensive poverty reduction and social inclusion strategy (24, CESCR).

### **Right to food and water**

- Ensure the enjoyment of the right to food and affordable drinking water and sanitation, particularly by Indigenous people, using a human-rights based approach (27, CESCR).
- Intensify efforts to address climate change and reduce greenhouse gas emissions (27, CESCR).

### **Health / Mental Illness**

- Improve the health of Indigenous people by, including: ensuring access to housing; safe drinking water; electricity and effective sanitation (28, CESCR).
- Provide all detainees with appropriate health and medical care (including mental health treatment) and ensure that adequate health care for prisoners be taken into account in health programs and policies (29 and 30, CESCR).
- Encourage the Detention Health Advocacy Group to adopt a human rights based approach when approaching reforms to the detention care system (29, CESCR).
- Allocate adequate resources for mental health services and other support measures for persons with mental health problems (30, CESCR).
- Implement the AMA's 2008 report of Indigenous health (30, CESCR).
- Reduce the high rate of incarceration of people with mental diseases (30, CESCR).
- Develop a broad framework for health services for migrant women (45, CEDAW).
- Pay particular attention to Indigenous women's health needs (41, CEDAW).
- Address overrepresentation of people with mental illness in prison (31, CAT).
- Increase resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons and strengthen community-based treatment options (31, CAT).
- Provide specialist mental health and psychiatric services on Christmas Island (31).
- Review private health services in prison whereby prisoners are denied access to Medicare or the Pharmaceutical Benefits Scheme (33, CAT).

### **Glossary**

ICCPR	ICCPR Report on Australia, 2 April 2009, recommendations
CEDAW	CEDAW, 20 July 2010 recommendations
CAT	Committee Against Torture, List of Issues prior to submission of 5 <sup>th</sup> periodic report, November 2010
CERD	Committee on the Elimination of Racial Discrimination, August 2010 Concluding Observations
CESCR	Committee on Economic, Social and Cultural Rights, May 2009, Concluding Observations