

Australia's

National Human Rights Action Plan

2012 Exposure Draft

Introduction

Civil Liberties Australia (CLA) thanks the Australian Government and the Attorney General's Department (AGD) in particular for preparing Australia's National Human Rights Action Plan 2012 Exposure Draft. CLA has participated in the development of the Baseline Study during 2011 and is pleased that the Australian Government has consulted with the Australian community in the development of that document and adopted many of the recommendations made by our organisation and other contributors. CLA welcomes this opportunity to provide a submission on Australia's National Human Rights Action Plan 2012 Exposure Draft and we look forward to engaging with the Australian Government on this and other human rights issues in the future.

CLA recognises that this Action Plan demonstrates Australia's on-going commitment to its international human rights obligations and willingness to improve the protection and promotion of human rights in Australia. We concur with the Australian Government that this National Human Rights Action Plan is the beginning of an ongoing process aimed at realising a more inclusive and equitable society.

Australia's International Human Rights Commitments

CLA welcomes the Australian Government's decision to take the necessary steps to ratify the Optional Protocol to the Convention against Torture (OPCAT). We submit that the timeline should be amended to be the end of 2012. Similarly we welcome the decision to review its position on the International Convention for the Protection of All Persons from Enforced Disappearances. However, we submit that the timeline should be amended to be the end of 2012. CLA also supports the Australian Government's decision to review its position on ILO Convention No. 169.

CLA submits that an Action should be inserted stating that the Australian Government will review its position on the following international instruments:

- International Convention on the Protection of the Rights of All Migrant Workers and their Families (CPRMW),
- the ILO Convention No. 102,
- the ILO Convention No. 103,
- the ILO Convention No. 183, and
- the Optional Protocol to CESC.R.

The Lead Agency should be the AGD and the timeline should be the end of 2012.

Action 8 provides an appropriate model of a quantified Action, a discreet Agency and a quantified timeline upon which progress can be measured. However, the proceeding Actions 9 – 12 and 14 are ambiguous, aspirational and not appropriately quantified. CLA is concerned that it will be difficult to measure progress without the information necessary for measurements to be made. We recommend the review of these Actions.

Australia's Human Rights Framework

Actions 23 and 24 should be amended to include a specific date in the timetable for the consideration/review. We submit that date should be the end of 2012; however the AGD would be better placed to determine the date. It may be appropriate to set a date for the initial consideration/review to be made, and subsequent consideration/review be conducted on an ongoing biannual basis.

Access to Justice

A number of Actions under this heading are aspirational and it is unclear what actions would be necessary to meet these targets. CLA submits that it is appropriate to explicitly state how much funding for what periods will be provided for the programs in Actions 28 and 30. The timelines should provide finite dates which can be used to measure whether the targets have been met. The Actions to be undertaken by the Victorian Government under this heading have clear performance indicators and timelines. This is in stark contrast to the Actions to be undertaken by the AGD. The absence of finite indicators by which progress can be measured is concerning to CLA.

Counter Terrorism

There are 220 Actions contained in the National Action Plan, but a single Action containing 70 words to address counter terrorism is a farce. CLA objects in the strongest terms possible to the inadequacy of the National Action Plan to address the human rights issues surrounding counter terrorism. This is a demonstration of the Australian Government's lack of bone fide intention. We note that the Exposure Draft has provided more specific and quantifiable performance indicators and timeline on the single issue (of those who employ or refer for work people who are not legally entitled to work) than is allocated to Counter Terrorism issues in their entirety. If the National Action Plan is to be taken as "Australia's on-going commitment to its international human rights obligations, and the Australian Government's desire to improve both the promotion and protection of human rights in Australia", this section is disingenuous. CLA submits that the entire counter terrorism section should be reviewed.

The use of force by police

The implementation of oversight mechanisms in Action 38 should have a finite date set out in the timetable. CLA suggests that the end of 2012 is appropriate. Further Actions should be inserted requiring the establishment of reviews of deaths in custody and in interactions with police. State and territory governments should be the agencies and annual reviews should be in the timetable. Human rights training should also be an Action included under this heading. State and territory

governments should be the agencies to train all new recruits, which should be achieved by mid 2012. All law enforcement officers should complete the training by mid 2013. The collection of data regarding the police use of TASERS should be included. We suggest the Australian Institute of Criminology is an appropriate agency and the initial collection of data should be completed by 2013 with annual reviews thereafter.

Worker's Rights, Climate Change and Poverty

CLA is pleased that the National Action Plan contains Actions under headings of Worker's Rights, Climate Change and Poverty. However, under the heading of Poverty, Action 62 is presently inadequate and represents an opportunity for the Australian Government to develop actions with measurable performance indicators and appropriate timelines. As stated in the Baseline Study, 2.2 million Australian living in poverty is a serious human rights issue. There is an extensive evidence base to draw from and CLA would like to see greater emphasis placed on poverty in the National Action Plan. Similarly, workers rights and climate change are issues should be further developed.

Indigenous Australians

It is apparent that actions to be taken by NSW, Qld, SA, WA, Tas and the ACT have been omitted. CLA is highly concerned that these state and territory governments have not submitted actions that should be taken to ameliorate the unacceptable levels of disadvantage in living standards, life expectancy, education, health and employment of Indigenous Australians. Following the death of Mr Ward in a prison van, CLA is especially concerned that WA is silent.

CLA submits that the series of actions contained collectively in Action 71 should be disaggregated and specific performance indicators and timelines set.

The actions contained in Action 73 have been completed prior to the publication of the Exposure Draft. We question the appropriateness of including Actions that have already been achieved and submit that Action 73 be deleted, or rewritten with the actions, performance indicators and timeline for future targets substituted.

CLA submits that an Action should be inserted with the target of ending the Northern Territory Emergency Response. The timeline should be 30 June 2013.

We recommend that Action 87 should be amended to quantify the funding for legal assistance services over specific time periods. CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. We recommend that the Australian Government should increase funding for legal assistance services and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

Women

The National Action Plan provides specific actions, which are quantified and have finite timelines upon which measurements can be made. CLA congratulates the Australian Government for taking Women's rights seriously; adopting a rights based approach and developing high calibre Actions. CLA is curious as to why Action 101 has been included, as it requires no action to be taken. We are

especially pleased with the inclusion of Actions 112 – 114 under the heading of Gender equality in public life.

Children and Young People

We recommend that Actions 128 and 129 should be amended to quantify the funding of legal assistance services over specific time periods. CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. We recommend that the Australian Government should increase funding for legal assistance services and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

People at risk of or experiencing homelessness

We recommend that Action 152 should be amended to quantify the funding for legal assistance services over specific time periods. We repeat, CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. We recommend that the Australian Government should increase funding for legal assistance services and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

People with a disability

CLA is concerned that Action 158 is not a quantified target. We recommend that an amendment be made to insert a quantifiable target that progress can be measured against. We recommend that Action 162 should have finite dates for the achievement of these actions. Under the heading of Legal Capacity, Action 170 should be amended to provide a finite date (2013) for the clarification and improvement of legislation at the state and territory level governing the sterilisation of women and girls with a disability. Furthermore, Action 171 should be amended to quantify funding for legal assistance services over specific time periods. CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. We recommend that the Australian Government should increase funding for legal assistance services and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

People in Prisons

Under the heading of Oversight Mechanisms, Action 181 should set out a finite date for the peer review to be completed. Action 183 should have a finite date set: we suggest that the end of 2012 is appropriate. CLA recommends that a similar Action should be drafted for the ACT Government to undertake a similar review. CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. Action 182 should be amended to set targets for improving the delivery of corrective services and performance indicators that measure the outcomes. Similarly, Actions 184, 185 and 187 require nothing more than the maintenance of the status quo. CLA submits that the Australian Government should increase funding for legal assistance services and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

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

CLA strongly disagrees with the position of the Australian Government that Ministerial Intervention is an appropriate mechanism. We submit that Action 189 should be amended to provide that the Australian Government will undertake to introduce domestic legislation which prohibits *refoulement* or extradition of persons to States where they would be in danger of torture or death. Under the heading of Immigration Detention, CLA recommends that the review in Action 191 should be amended to provide a finite date. We consider mid 2012 to be appropriate. We submit that Action 195 should be disaggregated into two parts, creating a new Action for children and families. A target of 100% of children and families should be set and the timeframe should be 14 days. Furthermore, it is concerning to CLA that Actions 196 – 198 require nothing more than the maintenance of the status quo.

Similarly, under the heading Refugees, humanitarian entrants and asylum seekers in the community, Action 204 requires nothing more than the maintenance of the status quo.

Under the heading of access to justice, CLA is concerned that Actions 206 and 207 require nothing more than the maintenance of the status quo. We recommend that the Australian Government should increase funding for legal assistance services and interpreter services, and the quantified increase over specific timeframes should be included as a performance indicator in the amended draft.

Under the heading Community attitudes and multiculturalism, we are concerned that Actions 209, 210, 213, 214 and 215 require nothing more than the maintenance of the status quo.

Other problems

CLA is greatly concerned that the state and territory governments in NSW, Qld, SA, WA, Tas and the ACT have not made comprehensive contributions. Under the federal system of government in Australia, significant responsibilities are placed on the states and territories. Throughout the National Action Plan, the Victorian Government has contributed, taken ownership, provided measurable performance indicators and timelines. The Northern Territory Government has similarly featured in areas of direct concern, especially in regard to indigenous Australians. The absence of the participation of NSW, Qld, SA, WA, Tas and the ACT in the National Action Plan is highly problematic and presents extreme difficulties in measuring progress in the future.

It is impossible to judge how much progress has been achieved without quantifiable targets and finite dates. CLA believes that the National Action Plan should not include Actions that require nothing more than the maintenance of the status quo. Why should the Australian Government claim credit for taking no action?

Similarly, throughout the National Action Plan, the AGD is identified as a lead agency in 69 Actions and in 42 Actions the performance indicator/timeline is stated as “Ongoing”. How can an interim review measure whether the target has been achieved if it cannot be compared to a concrete performance indicator or timeline? CLA questions the methodological utility in having 60% of the Actions where the AGD is involved having ambiguous and non-measurable performance indicators/timeframes.

Conclusion

We thank the Government for this opportunity to contribute to the consultative process and indicate our continuing willingness to engage in the next round. We believe that the incorporation of the recommendations highlighted above in the proceeding draft will increase quantifiability and improve the quality of the National Action Plan. It will also improve the measuring of progress in the future.

If further detail is required, please contact the President of Civil Liberties Australia, Dr Kristine Klugman email president@cla.asn.au

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