



Australian
Human Rights
Commission

Consultation on exposure draft National Human Rights Action Plan

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE
ATTORNEY-GENERAL'S DEPARTMENT**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Attorney-General's Department on the exposure draft of a new Human Rights National Action Plan which the Department has issued for comment.
2. As has been previously indicated, the Commission strongly welcomes the initiative to develop a new Human Rights National Action Plan for Australia.
3. In view of the opportunities for input which have been provided in earlier stages of this process the Commission proposes to make only brief comments in this submission. The Commission would be happy to continue discussions in more detail with the Department.
4. In responding to the Background Paper released by the Department in December 2010, the Commission¹ noted and welcomed:
 - recognition that an Action Plan should be action oriented - setting specific, measurable, achievable and realistic objectives and putting forward measures aimed at reaching these objectives;
 - recognition that an effective Action Plan should be truly national in character, rather than being an Action Plan for the Commonwealth Government alone;
 - the commitment to developing a baseline study building on available human rights indicators and the work undertaken during the National Human Rights Consultation and for the Universal Periodic Review process;
 - the commitment to a consultative approach throughout the process;
 - recognition of the importance of utilising the expertise of independent national human rights institutions in the process while maintaining clear ownership by government.
5. The Commission also noted
 - *issues of comprehensiveness*: indicating that it would be appropriate for a new Action Plan for Australia to address the rights and obligations contained in the seven principal human rights treaties (ICCPR, ICESCR, CERD, CEDAW, CROC, CAT and DisCo) as well as addressing the Declaration on the Rights of Indigenous Peoples;
 - *a need to identify priority actions*: given that, as indicated in the Department's website material, it is important that objectives in an Action Plan be achievable and realistic within a defined timeframe;

¹ Letter from the President of the Commission to the then Attorney-General, 11 January 2011

- *a need to avoid duplication*: in that a National Human Rights Action Plan should complement and link existing national strategies rather than duplicating them.
6. The Commission endorses the position stated in the exposure draft that a new National Human Rights Action Plan should demonstrate how Australia will turn commitments made in the Universal Periodic Review process into specific actions to improve and promote human rights.
 7. The Commission welcomes the proposal for work on improved data collection and analysis with the aim of improving measurement of progress on human rights in Australia.
 8. The Commission views effective measurement and reporting of outcomes against appropriately identified human rights indicators as a critical element in ensuring that a National Human Rights Action Plan
 - is as effective as possible in improving human rights outcomes for people in Australia; and
 - provides an effective and transparent basis for evaluation and reporting, including in the context of future appearances by Australia in the UPR process, and for ongoing review, improvement and further development in subsequent plans, rather than simply listing actions, as previous plans have been criticised for doing.
 9. The Commission considers, however, that prior to the proposed work being undertaken to enable improved measurement of outcomes against human rights indicators, it would be possible and desirable to increase the specificity of a number of the proposed actions stated in the exposure draft.
 10. In particular the Commission considers that it should be possible and would be appropriate (including in the interests of ensuring that monitoring and evaluation can be conducted effectively) to state more clearly
 - proposed or targeted timelines for more of the proposed actions; and
 - public consultation elements of proposed actions.
 11. The Commission also considers that while acknowledging the need to set priorities and ensure that actions are achievable within the life of the Action Plan, it should be possible and would be appropriate to include a number of additional actions to make the National Human Rights Action Plan more comprehensive.
 12. The Commission notes that there is significant State and Territory government responsibility for and activity on human rights issues within the scope of the National Human Rights Action Plan and that accordingly it is difficult for the Attorney-General's Department to present a comprehensive plan pending further State and Territory input.

13. The Commission submits however that in addition to the Commonwealth committing to actions in areas within its direct responsibility, the National Human Rights Action Plan should include commitments to take effective leadership roles, including through
 - agreed national strategies, national partnership agreements and related COAG processes; and
 - advancing human rights issues through ministerial councils, including promoting consideration by other jurisdictions of effective human rights initiatives taken in one or more States or Territories.
14. The Commission submits that the National Human Rights Action Plan should also include commitment by the Commonwealth to promote human rights initiatives by local government, including through the Australian Council of Local Governments.
15. Brief comments on the exposure draft are provided below by reference to these themes previously identified by the Commission and in the Department's Background Paper.
16. Issues in relation to legal protections against discrimination are addressed separately in the Commission's submission on the consolidation of Commonwealth discrimination laws and are not addressed here. The Commission looks forward to further discussion of those issues in that context.

2 Proposed actions and recommendations for additional elements

2.1 Australia's human rights commitments

(a) Human rights education

17. The Commission notes that in its UPR response the Australian Government accepted a range of recommendations regarding human rights education.² These recommendations reflect the point that, in addition to being a means of promoting human rights, human rights education is itself the subject of specific substantive human rights and attendant obligations, rather than being a matter of purely discretionary policy from time to time.³

² UPR Rec 17 (Sweden): A (*accepted*); UPR Rec 18 (France): PA (*accepted-in-part*); UPR Rec 19 (Jordan): PA; UPR Rec 20 (Argentina): A; UPR Rec 34 (France): A; UPR Rec 35 (Austria): A; UPR Rec 36 (Jordan): A; UPR Rec 37 (Norway): PA; UPR Rec 135 (Algeria): A; UPR Rec 141 (Lao People's Democratic Republic): A; UPR Rec 144 (Cambodia): A; UPR Rec 145 (Chad): A

³ Article 26(2) Universal Declaration on Human Rights 1948; Article 13, International Covenant on Economic, Social and Cultural Rights 1966, Article 29(1) of the Convention on the Rights of the Child 1989. The Declaration on Human Rights Education and Training, adopted by the United Nations General Assembly in 2011 also provide guidance on the scope of the Right to Human Rights Education.

18. The Commission submits, therefore, that in addition to the references to human rights education in the exposure draft by reference to the Human Rights Framework (action #21), it would be appropriate to include reference to human rights education under the heading of Australia's human rights commitments.
19. The Commission would be happy to discuss with the Department in more detail possibilities for revising and updating proposed actions in this area, including with regard to:
 - progress in inclusion of human rights within the National Curriculum;
 - developments in the Commission's community education role;
 - experience with the Department's community education grants program;
 - inclusion of outcome indicators on the effectiveness of human rights education measures in addition to the activity measures presently stated in the exposure draft.

(b) Steps towards ratification of OPCAT (action #2)

20. The Commission welcomes the tabling on 28 February of a National Interest Analysis on ratification by Australia of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
21. The Commission submits that it would be appropriate for the National Human Rights Action Plan to include a timeline for further steps towards ratification.
22. The Commission also considers that the National Human Rights Action Plan should include an express commitment and timeline for establishment of a National Preventive Mechanism as required under OPCAT.

(c) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

23. The Commission considers that the Action Plan would appropriately include a commitment to seek views on Australia becoming bound by the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which was adopted in 2008 and establishes an individual communications mechanism in relation to that Covenant comparable to mechanisms available in relation to other principal human rights instruments.
24. Preferably such a commitment would include a timetable for
 - seeking views from States and Territories;
 - public consultation;
 - preparation of a National Interest Analysis and its submission to the Joint Standing Committee on Treaties; and

- target dates for signature and ratification.

(d) *Third Optional Protocol to the Convention on the Rights of the Child*

25. The Commission considers that the Action Plan would appropriately include a commitment to seek views on Australia becoming bound by the Third Optional Protocol to the Convention on the Rights of the Child, which was adopted in December 2011 and establishes an individual communications mechanism in relation to that Convention comparable to mechanisms available in relation to other principal human rights instruments.
26. Again, preferably such a commitment would include a timetable for
- seeking views from States and Territories;
 - public consultation;
 - preparation of a National Interest Analysis and its submission to the Joint Standing Committee on Treaties; and
 - target dates for signature and ratification.

(e) *Review of reservations (action #3)*

27. The Commission commends the inclusion of a timeline for completion of this review by end 2012. Noting that consultation within government is intended to be completed within the first half of 2012 it would be appropriate if possible to indicate timelines for public consultation prior to the conclusion of this review.

(f) *Enforced disappearances (action #4)*

28. The Commission notes that review of the Government's position on the International Convention for the Protection of All Persons from Enforced Disappearances is indicated in the exposure draft as "ongoing". The Commission suggests that it would be appropriate to provide more specificity on the proposed process for review, including target timelines and consultation elements.

(g) *Migrant Workers Convention*

29. The Commission notes that in its response to recommendations made in the UPR process, the Government rejected recommendations that Australia ratify the International Convention on the Rights of Migrant Workers, on the basis that the Government considers current protections are adequate. On this basis the Commission suggests that it would be appropriate for the National Human Rights Action Plan to specify measures of ongoing monitoring in this area and to commit to review of the Government's position on a regular basis and/or if monitoring indicates that circumstances have changed materially.

(h) *ILO Convention 169 (action #5)*

30. The Commission notes that workplace relations Ministers have agreed to consider International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries during 2012. The Commission recommends that the National Human Rights Action Plan indicate clearly processes for participation by Aboriginal and Torres Strait Islander people, including through the National Congress of Australia's First Peoples, in review of Australia's position regarding this Convention.

(i) *Other unratified ILO Conventions*

31. The Commission submits that it would be appropriate for the National Human Rights Action Plan to include details of processes and timelines for consideration of ratification of other ILO Conventions not yet ratified by Australia.

(j) *Death penalty (action #7)*

32. The Commission notes that ongoing adherence to the legislative requirements of the *Extradition Act 1988 (Cth)*, in cases where the offence for which extradition is sought is punishable by the death penalty, is stated as an ongoing action. Considering that Australia has committed itself to opposing the death penalty by becoming a party to the Second Optional Protocol on the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, the Commission submits that it would be appropriate to include appropriate measures to ensure that other actions for which the Australian Government has responsibility, including under the *Mutual Assistance in Criminal Matters Act 1987 (Cth)* (such as police or intelligence co-operation) do not lead to the imposition of the death penalty.

(k) *Promotion of human rights through official aid programs (action #10)*

33. The Commission suggests that in addition to the present general reference to promotion of human rights through aid programs, it would be appropriate to consider including reference to recent policy and program measures to mainstream disability and gender issues in development agendas.

(l) *Funding support for UN human rights activity (action #11)*

34. The Commission suggests that in addition to stating the Government's commitment to provide ongoing support for the Office of the High Commissioner for Human Rights, it would be appropriate to refer to
- commitments to provide support for UN Women and for the recently established UN Trust Fund to assist nations in implementation of the Convention on the Rights of Persons with Disabilities;
 - continued funding and support for the participation of women representatives at the annual meeting of the Commission on Status of Women and at other key international forums on human rights;

- continued funding and support for participation of representatives of Aboriginal and Torres Strait Islander people in key international forums on human rights; and
- continued support⁴ for granting of independent participation rights for national human rights institutions at the Commission on the Status of Women.

(m) *Capacity building for ASEAN human rights bodies (action #12)*

35. The Commission suggests that in addition to referring to ongoing work to build the capacity of the Association of South-East Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, it would be appropriate to refer to work to build the capacity of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children.

2.2 Human rights framework

(a) *Human rights education (action #21)*

36. As noted above the Commission

- submits that reference to human rights education should also be made under the heading of “Australia’s human rights commitments”;
- recommends the inclusion of outcome measures rather than only activity measures in relation to human rights education; and
- suggests that further discussion between the Department and the Commission in this area would be useful.

(b) *Joint Parliamentary Committee on Human Rights (action #22)*

37. In addition to updating actions in this area to reflect the entry into force of the legislation and steps taken to establish the Committee, the Commission suggests that it would be appropriate here to include

- reference to the timetable for review of the operation of the Committee; and
- measures to facilitate effective operation of the Committee including measures to facilitate effective participation by civil society in the Committee’s work.

⁴ As expressed for example in the Australian National Statement delivered at Commission on the Status of Women 54th session, United Nations, New York, March 2010, available at http://www.un.org/womenwatch/daw/beijing15/general_discussion/AUSTRALIA.pdf

(c) *Review of legislation (action #24)*

38. The Commission suggests that rather than actions and timeline in this respect being listed as “ongoing”, it would be appropriate to include as much information as possible on

- processes for identifying priority legislation, policies and practices for review;
- the role of public consultation in determining priorities and review processes; and
- relationships between the Departmental review process and the Joint Parliamentary Committee on Human Rights.

2.3 *Human rights concerns of the general community*

39. The Commission suggests that it would be helpful in the introductory section of this part of a National Human Rights Action Plan to refer to the emphasis placed on human rights education by many submissions to the National Human Rights Consultation.

(a) *Access to justice (action #26)*

40. The Commission suggests that it would be appropriate to provide more specificity on processes and timeline for actions aimed at building a stronger evidence base for compliance with the Strategic Framework for Access to Justice in the Federal Civil Justice System.

41. It would clearly also be appropriate to

- build the review of legal assistance services recently announced by the Attorney-General into the National Human Rights Action Plan; and
- ensure appropriate linkages to the National Human Rights Action Plan in review and evaluation measures in the lead up to the conclusion in 2014 of the current National Partnership on legal assistance services.

(b) *Use of force by police and deaths in custody (actions 38-42)*

42. The Commission notes that actions presently stated in the exposure draft involve continuation of existing monitoring, reporting and oversight mechanisms, but do not appear to include commitments from governments in relation to

- responding to issues raised by oversight mechanisms; or
- taking proactive actions to prevent inappropriate or excessive use of force and to prevent deaths in custody.

(c) *People trafficking (actions 43-58)*

43. The Commission notes and welcomes the extensive range of measures in this area. The Commission considers that additional actions should be specified to include actions specifically addressing child trafficking and the victims of child trafficking.
44. The Commission's August 2011 submission to the Committee on the Rights of the Child⁵ recommended that the Australian Government should:
- undertake comprehensive data collection and research on the prevalence of child trafficking and sexual exploitation;
 - implement measures for providing specialist child specific services for child victims of trafficking, non-citizen minors and unaccompanied minors, in accordance with the best interests of the child principle and the UNICEF 'Guidelines on the Protection for Child Victims of Trafficking' (2006);
 - ensure that where trafficked people and their dependent children obtain permanent residence in Australia, these families receive access to adequate settlement services;
 - amend the visa framework for victims of trafficking to ensure every person who is identified as a victim of child trafficking and who would face danger if returned to their country of origin is eligible for a permanent visa, regardless of whether they participate in law enforcement processes; and
 - develop clear guidelines for agencies on how to deal with child victims of trafficking on issues including guardianship, housing, access to education, confidentiality and privacy, access to independent lawyers and protecting the best interests of the child.
45. The Commission's November 2011 submission to the UN Special Rapporteur on Trafficking⁶ also recommended
- development of a federal victims' compensation scheme;
 - provision of improved access for trafficked people to information and legal services for assistance with making compensation claims; and
 - improved provision of settlement services, including access to housing, for trafficked women and their dependent children who obtain permanent residence in Australia.

(d) *Human rights and climate change (action #61)*

46. The Commission notes that Australia's UPR response covers a broader range of issues in relation to human rights and climate change compared to the commitment stated in the exposure draft to implement the Government's

⁵ http://www.humanrights.gov.au/legal/submissions/2011/2011108_child_rights.html

⁶ http://www.humanrights.gov.au/legal/submissions/2011/20111114_trafficking.html

Clean Energy Futures program and compensate low income earners for price impacts. The UPR response states that:

“Human rights impacts will be considered as part of policy approaches to address all impacts of climate change”.

47. In particular the Commission notes specific impacts of climate change on Aboriginal and Torres Strait Islander people concerning land and cultural heritage and submits that these should be specifically addressed in the National Human Rights Action Plan.
- (e) *Poverty (action #62)*
48. The Commission suggests that it would be appropriate to include reference to outcome measures in relation to social inclusion rather than only referring to ongoing policy and program activity.
- (f) *Violence, harassment and bullying*
49. The Commission notes and welcomes the range of commitments in the Exposure Draft regarding prevention of and responding to violence and harassment in relation to the human rights experience of specific groups. The Commission submits that in addition it would be appropriate for the National Human Rights Action Plan to include a distinct heading on violence, harassment and bullying. This would assist in ensuring that the Plan reflects general community concerns in this area (including in work; education; online environments; public spaces; and in relation to home and family violence), as well as assisting in integrating, and emphasising the significance of, commitments and initiatives in relation to specific groups.

2.4 Human rights experience of specific groups

- (a) *Aboriginal and Torres Strait Islander peoples (actions 63-99)*
50. The Commission considers that the submission which it made on 6 February 2012 to the Senate Community Affairs Legislation Committee on the *Stronger Futures in the Northern Territory Bill 2011*⁷ is relevant not only to the specific context of that Bill but also to human rights for Aboriginal and Torres Strait Islander people more generally. The Commission urges that this submission be considered in full in finalising a National Human Rights Action Plan, including the key points as identified in the submission:
- ensuring that laws and their implementation in practice are consistent with human rights obligations, including as set out in the *Racial Discrimination Act 1975 (Cth)* and as explained in the Declaration on the Rights of Indigenous Peoples;

⁷ http://www.humanrights.gov.au/legal/submissions/2012/20120206_stronger.html

- ensuring effective consultation and engagement with Aboriginal and Torres Strait Islander peoples in developing and implementing law and policy affecting them, and committing to working with Aboriginal and Torres Strait Islander communities to develop appropriate responses that meet the identified needs of individual communities;
- resourcing the development of community governance structures to enable Aboriginal and Torres Strait Islander peoples to engage with and control decision-making about their own development goals; and
- review and reform by governments of their internal structures and workforce to ensure cultural competency, cultural safety and cultural security in implementing laws and programs affecting Aboriginal and Torres Strait Islander peoples.

51. The Commission notes that a number of actions set out in the section of the exposure draft regarding refugees, asylum seekers, migrants and people from culturally and linguistically diverse backgrounds, are applicable to Aboriginal and Torres Strait Islander people and should be reproduced or referenced in this section of the National Human Rights Action Plan. In particular this point applies to the National Anti-Racism Partnership and Strategy (action #208).

(b) *Women*

- The Commission has welcomed⁸ the introduction into Parliament of reforms to the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*, in response to the recommendations of the Review of the Equal Opportunity for Women in the Workplace Act and Agency, in order to strengthen gender equality in Australian workplaces.

52. The Commission recommends that in addition to reflecting these reforms, a National Human Rights Action Plan should give greater and more specific emphasis to issues of economic security and participation for women. The Commission has made a range of recent recommendations in this area including

- measures to promote greater transparency in relation to pay rates, including in individual contracts⁹ ;
- provision of transitional funding to ensure that any decision of Fair Work Australia arising from the Australian Services Union's application for an Equal Remuneration Order on behalf of Social and Community Service workers can be implemented without job losses or reduction of services¹⁰;
- measures to make flexible work part of workplace culture, including amending the National Employment Standard to incorporate duties to reasonably accommodate family and carer responsibilities, including through the provision

⁸ http://www.humanrights.gov.au/about/media/media_releases/2012/12_12.html

⁹ Australian Human Rights Commission submission to Insecure Work inquiry

¹⁰ Australian Human Rights Commission submission to Insecure Work inquiry

of flexible work arrangements¹¹, and to extend “right to request” provisions to accommodate other family and caring responsibilities, including caring for older people and people with disabilities¹²;

- reviewing the provision of superannuation on paid parental leave and extending the superannuation co-contribution scheme¹³;
- ensuring effective and equitable access to affordable and appropriate child care, early child hood education and out-of-school care, including in rural regional and remote areas, and for Indigenous children, children from culturally and linguistically diverse communities and children with disabilities¹⁴; setting and reporting annually against gender equality targets within the Australian Public Service including executive level and SES positions¹⁵.

53. In relation to freedom from violence (actions #100-111), the Commission recommends that the National Human Rights Action Plan make express reference to monitoring and evaluation against measures of outcomes. In particular as recognised by the National Plan to Reduce Violence Against Women and their Children, governments have endorsed the objective of reducing violence, in addition to the maintenance of existing legal and program responses to violence where it occurs.
54. In relation to sexual harassment (action #107) it would be appropriate to note that the Commission has indicated that in the performance of its functions under the Sex Discrimination Act, it will undertake the third national sexual harassment prevalence survey.
55. In relation to women in the Australian Defence Force (actions #119-120) the Commission reported on its review into the Treatment of Women in ADFA in November 2011; and will report on its review of Treatment of women in the ADF in mid 2012. The Commission would be pleased to provide further information in this respect.
56. The Commission submits that the National Human Rights Action Plan should refer to Australia’s National Action Plan on Women, Peace and Security, including measures on monitoring and evaluation of this Plan.

(c) *Children and young people*

57. The Commission submits that it would be appropriate for the introductory part of the section regarding children and young people in the National Human

¹¹ Australian Human Rights Commission submission to review of the Sex Discrimination Act, available at http://humanrights.gov.au/legal/submissions/2008/20080901_SDA.html#10_3

¹² Australian Human Rights Commission submission to the Senate Education, Employment and Workplace Relations Committee inquiry on the Fair Work Bill 2008, available at http://humanrights.gov.au/legal/submissions/2009/20090123_Fair_Work.html

¹³ Australian Human Rights Commission submission to Productivity Commission inquiry into Paid Maternity, Paternity and Parental Leave, available at http://humanrights.gov.au/legal/submissions/2008/20081124_maternity.html

¹⁴ Australian Human Rights Commission Gender Equality Blueprint, available at http://www.humanrights.gov.au/sex_discrimination/publication/blueprint/index.html

¹⁵ Australian Human Rights Commission Gender Equality Blueprint

Rights Action Plan to refer expressly to relevant national strategies which include objectives for promoting human rights for children and young people, including referring to arrangements under those strategies for monitoring, evaluation and review, and lines of accountability for outcomes. In addition to the National Framework for the Protection of Australia's Children and the National Plan to Reduce Violence against Women and their Children referred to in the exposure draft under specific actions, other relevant strategies might include the National Early Years Strategy, the National Safe Schools Framework, and the cybersafety plan.

58. It would also be helpful to cross reference here other national strategies (including the National Disability Strategy) addressing issues for particular groups of children and young people, including indicators and outcome measures under those strategies (for example in relation to education outcomes).
59. In particular, it would be helpful to make clearer that commitments regarding juvenile justice are not confined to continued funding of community legal centres (actions #128-129) but include measures under the National Disability Strategy in particular, to reduce over-representation of young people with disability and young Aboriginal and Torres Strait Islander people in the criminal justice system and in detention. It would also be appropriate in this area to commit to measures to prevent children being held in adult prisons.

(d) Older people

60. The Commission submits that the performance indicators presently provided in the exposure draft in relation to quality of aged care services and in relation to elder abuse and assaults require significant improvement, to provide meaningful guidance on whether outcomes for older Australians have been improved over the life of the National Human Rights Action Plan against the objective of promoting quality residential aged care services.
61. In relation to assaults, it is not clear whether an increased number of reported assaults would indicate increased awareness of rights to personal safety and access to justice (which would be hoped to reduce the prevalence of assaults over time) or would indicate continued or increased prevalence.
62. Additional indicators which would be appropriate in this area include
- indicators regarding service quality, including numbers of complaints made by users of aged care services and the number of complaints referred to the Aged Care Commissioner, and outcomes of complaints; and
 - indicators regarding service availability, including waiting lists and availability of beds, and including availability in urban, regional and remote areas.
63. The Commission notes that action items #134 and #135 in relation to financial security for older people require updating to take account of
- the third and final report of the Advisory Panel on the Economic Potential of Senior Australians; and

- lifting of the age cap on superannuation contributions, and introduction of related reforms announced in February 2012.

(e) *Gay, lesbian, bisexual and sex and / or gender diverse people*

64. The Commission suggests that it would be appropriate to include, at action #138 in relation to same sex relationships, reference to the decision by the Australian Government from February 2012 to provide “no impediment” certificates to same sex couples wishing to marry overseas.
65. Noting the desirability of inclusive and respectful terminology in this area, and diverse and evolving community views in this respect ¹⁶, the Commission suggests that at action #143 it would be helpful to refer to Governments working to develop a nationally consistent approach to “the legal recognition of sex and gender, addressing recommendations made in the Australian Human Rights Commission’s paper, *Sex Files: the legal recognition of sex in documents and government records.*”
66. The Commission submits that it would be appropriate for this action to be accompanied by additional indications of processes and timelines beyond the current “ongoing” status.

(f) *People at risk of or experiencing homelessness*

67. The Commission submits that, in addition to the welcome recognition of Aboriginal and Torres Strait Islander people as being over-represented among people who are homeless or at risk of homelessness, it would be appropriate to refer to risks and specific needs for people with disability, including people with mental illness, women (in particular women escaping violence), families, older people, children and young people.

(g) *People with disability*

68. The Commission notes that it may be possible to update the National Human Rights Action Plan in relation to people with disability when the initial annual report to COAG on implementation of the National Disability Strategy becomes available (scheduled for February 2012).
69. Noting the importance of employment for social and economic participation and opportunity, the Commission submits that action item #156 in relation to access to employment options for people with disability should be accompanied by specification of outcomes aimed for rather than being confined to description of activities to be undertaken.
70. The Commission notes that action item #158, in relation to Australian Public Service employment, does specify an outcome of increased numbers of people with disability employed. The Commission submits that it would be

¹⁶ As indicated in submissions to the Attorney-General’s Department on the consolidation of Commonwealth laws, and in the course of the Commission’s Sex Files consultations.

appropriate to specify a target in this respect and mechanisms for accountability for its achievement throughout the life of the Plan.

71. In relation to action item #170 on sterilisation of women and girls with disability, the agrees that work by the Commonwealth with States and Territories is accurately described as “ongoing” but submits that a more specific commitment should be added regarding monitoring of the occurrence of sterilisation and of effectiveness of measures to prevent unlawful sterilisation and to ensure the availability of alternative options.
 72. In relation to action item #172 on freedom from exploitation and violence, the Commission notes that measures to prevent violence against women with disability and improve service responses for women who have experienced violence are to be addressed through the series of three year action plans under the National Plan to Reduce Violence Against Women and their Children. The Commission support this approach, consistent with the view indicated earlier in this submission by the Commission on the relationship between the National Human Rights Action Plan and other national strategies.
 73. The Commission notes however that it would be appropriate for the National Human Rights Action Plan to include express commitments to ensuring
 - monitoring of the level of experience of violence by women and children with disability; and
 - monitoring of the effectiveness of service responses, including advice, information and advocacy services, justice system responses, and emergency accommodation.
- (h) *Carers*
74. The Commission submits that a National Human Rights Action Plan should include a commitment including timelines for reviewing measures relating to retirement income security for unpaid carers.
- (i) *People in prisons*
75. The Commission considers that, notwithstanding that the National Justice CEOs working group on mental illness and cognitive disability is not due to report back until June 2012, action item #179 could be accompanied by more substantive performance measures than reference to this reporting date, at least to the level of identifying that the outcome aimed for is to ensure that appropriate diversionary options are available. The Commission also suggests that this action item would more appropriately be headed “Justice system” rather than “Health”.
 76. The Commission submits that it would be appropriate to include with action item #181 any information available on a target date for completion of peer review processes for the Australian Standard Guidelines for Corrections.

- (j) *Refugees, asylum seekers, migrants and people from culturally and linguistically diverse backgrounds*
77. The Commission submits that a more specific timeline should be provided for review of treaty body recommendations in relation to immigration detention (for example within a certain number of months of recommendations being made) rather than this being listed only as ongoing (action #191).
78. The Commission notes its view that meeting the commitment stated in the exposure draft to ensuring that detention is not indefinite or arbitrary requires significant reform to the system of mandatory detention.
79. The Commission welcomes recent changes in policy and practice regarding community detention and bridging visas as means towards reducing the period of detention and ensuring that detention is in the least restrictive environment possible. The Commission suggests that these initiatives should be specifically referred to in the National Human Rights Action Plan.
80. The Commission notes that further action is required to ensure that indefinite detention does not result for people who are stateless or people who have received an adverse security clearance.
81. The Commission submits that it would be appropriate to include a commitment and timeline for review and reform of guardianship arrangements for children who are asylum seekers.
82. In relation to action #197 the Commission notes that adequate resourcing is required to support powers to report on conditions within detention facilities.
83. In relation to action #206, the Commission notes that needs for translating and interpreting services are considerably broader than the specific context referred to of enabling assistance by community legal centres. The Commission submits that the National Human Rights Action Plan should include commitment to ensure access to language services more broadly.