National Human Rights Action Plan:
Exposure Draft

Submission to Australian Government Attorney-General’s
Department Consultation
February 2012

Prepared by Andre Dao
Research assistance provided by Sagorika Platel, Roxana Zamani-Ashni and Kathy Tu
1. The Castan Centre thanks the Australian Government for the opportunity to comment on its Exposure Draft of a National Human Rights Action Plan (“Action Plan”). The Action Plan, according to its introduction, intends to build on the extensive work of the Australian Government to create an inclusive society where all are valued, and have the opportunity to participate fully, regardless of factors such as age, gender, race, religion or disability. The introduction also states that the Action Plan is a demonstration of how Australia is taking specific actions to improve and promote human rights in line with commitments made in the context of the Universal Periodic Review.

2. The introduction to the Action Plan highlights the history of human rights policy in Australia, beginning with the first Action Plan in 1994, which was the first of its kind in the world. This Action Plan was updated in 2004, and in 2009 the National Human Rights Consultation was conducted. Following the launch of Australia’s Human Rights Framework in 2010 and Australia’s first Universal Periodic Review before the United Nations Human Rights Council in 2011, the Australian Government released its Baseline Study in preparation for the new Action Plan. This marked the first time that an extensive evidence base drawing on relevant research, UN recommendations and other data has been used to inform the development of an Action Plan. The Centre has previously provided submissions (most notably to the National Human Rights Consultation and on the Baseline Study) which address these policy developments, including priority areas for reform. As such, we intend to focus in this submission on the Government’s commitments as represented in the Action Plan.

3. The Centre notes that in developing the Action Plan, the Government has engaged with the community more extensively than ever before. We welcome this engagement with individuals and Non-Governmental Organisations and encourage the Government to continue to be open and responsive to community submissions. The Centre also notes that the Action Plan intends to take into account available resources and to prioritise pragmatic outcomes. Whilst we understand that Government resources are limited, we urge the Government to use this Action Plan as an opportunity to aim as high as possible.

4. In summary, the Government’s efforts to advance human rights are welcome. However, the Government must ensure greater participation by all State and Territory Governments before the Action Plan is finalised. The following commentary follows the Exposure Draft’s section headings and contains suggestions in this vein for the final Action Plan.

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1 Australia’s National Human Rights Action Plan, 2.
Protection and promotion of human rights in Australia

5. Improving data collection and analysis – The Centre welcomes the Government’s intention to establish an advisory group with the aim of improving measurement of progress on human rights in Australia.

6. Australia’s international human rights commitments – The Centre welcomes the Government’s proposed actions towards meeting Australia’s international human rights commitments. We particularly welcome: Action 2 – ratifying OPCAT; Action 3 – reviewing reservations to international human rights instruments; Action 4 – considering position on CED; Article 5 – considering position on ILO Convention 169; Action 13 – disability strategy for aid program; and Actions 15 and 16 – facilitating greater participation by people with disability and Indigenous people in key international human rights forums.

7. However, the Centre is concerned that Action 7 does not do enough to prevent extradition to countries where the person may face the death penalty. In particular we refer to UPR Recommendation 34 (France), which was accepted by the Government insofar as the Government considers the provisions of the Extradition Act 1988 (Cth) adequate to prevent extradition where the death penalty is a possibility. However, UPR Recommendation 34 (France) refers directly to the recommendations of the latest Human Rights Committee Concluding Observations. Specifically, recommendation 19 says that Australia is not doing enough to stop extradition where the death penalty is sought and notes with concern reports of cases where extradition has occurred under those circumstances. The Centre urges the Government to take immediate steps to comply with the recommendations of the HRC.

8. The Centre welcomes the Government’s commitment in Action 8 to raise Australia’s aid to 0.5% of Gross National Income by 2015-16. However the Centre notes that Recommendation 135 (Algeria) actually recommends that Australia increase its aid to 0.7% of GNI. The Government has not set a target for raising aid to the stipulated

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4 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 76.
5 See UN Doc A/HRC/17/10/Add.1 “Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review” – reply to Recommendation 34.
6 UN Doc CCPR/C/AUS/CO/5 “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant”.
7 See Kwok Yin Fong, CCPR/C/97/D/1442/2005, in which the Human Rights Committee found that in the case of removal, Australia would be in violation of article 6 as there was a real risk that the author would be sentenced to death upon return to China.
8 The Centre notes that the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011 was recently passed and acknowledges that the Government is working towards strengthening death penalty protections in mutual assistance matters. Despite these amendments, the Government should be doing more to fully implement the HRC’s recommendations.
0.7% of GNI – instead saying “as economic and fiscal conditions permit”. The Centre urges the Government to set a realistic but firm target to raise Australia’s aid to 0.7 of GNI. The Government should also ensure that no development assistance and trade programmes advocate public sector and policy reforms which might have adverse impacts on the enjoyment of human rights, especially by the poorest and most vulnerable. With this in mind, AusAID should form a strategic partnership with the Australian Human Rights Commission (AHRC) in order to develop human rights impact assessments of development strategies.

9. The Centre notes with concern that the Government has rejected UPR Recommendation 10 (Algeria, Bolivia, Turkey, Phillipines, Bosnia and Herzegovina) and part of UPR Recommendation 9 (Argentina) relating to the International Convention on the Protection of the Rights of all Migrant Workers and their Families as this is one of the nine core human rights treaties. In particular the Centre urges the Government to comply with the recommendation of the Phillipines, to “engage with civil society with a view to possible accession to the ICRMW.”

10. The Centre also notes with concern that this section omits to mention the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The Government should state clearly its position on the justiciability of economic, social and cultural rights. The Centre again reminds the Government that, in its recent publication Australia: Seeking Human Rights for All, Australia is said to be “a leading proponent of [the] consistent and comprehensive implementation” of the Universal Declaration of Human Rights, and to be “boosting its effort towards improved economic, social and cultural rights” recognising that “human rights are indivisible.”

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9 See UN Doc A/HRC/17/10/Add.1 “Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review” – reply to Recommendation 135. See also UN Doc A/HRC/17/37/Add.1 “Report of the Independent Expert on the effect of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights” – paragraph 91: the report also recommends Australia commit to increase its ODA to 0.7 per cent of GNI.


12 <http://www2.ohchr.org/english/law/cmw.htm>. See also the Castan Centre’s Submission to the National Human Rights Action Plan: Draft Baseline Study.


16 Ibid, 2-3.
11. The Centre notes that there is no mention of Australia’s engagement with the UN human rights system in the Action Plan. We refer to our Baseline Study Submission and encourage the Government to consider ways in which Australia’s engagement could be strengthened, including through more timely response to Concluding Observations and providing an effective remedy to individuals in respect of whom the UN human rights treaty bodies have found breaches of our obligations – preferably through a binding statutory scheme.\(^17\)

12. **Legal protections** – The Centre welcomes the Government’s commitment in Action 17 to fund and empower the AHRC, especially as various UN bodies and committees have noted that the work of the AHRC is essential to furthering human rights in Australia. The Government should consider strengthening the AHRC’s mandate.\(^18\) The Centre also welcomes the Government’s commitment in Action 18 to consolidate federal discrimination legislation, but notes that UPR Recommendation 46 (Morocco) was for Australia to “strengthen the federal legislation to combat discrimination”, rather than simply consolidate it. The Centre notes that UPR Recommendation 98 (Brazil) specifically encourages stronger measures to prevent “hate speech”, which is not mentioned in the Action Plan.

13. **Australia’s Human Rights Framework** – The Centre notes and approves of UPR Recommendation 22 (Canada, Ukraine, Russian Federation and Norway) which advocates the implementation of a federal Human Rights Act. We refer to our previous submission to the National Human Rights Consultation which recommended that the Government adopt a Bill of Rights.\(^19\) Such an Act would complement the Action Plan and give it greater force. The Centre also notes UPR Recommendation 43 (Pakistan, India) which recommends that Australia grant comprehensive protection to rights of equality and non-discrimination. The Centre considers the Government’s response that it will not commit to substantive equality inadequate and disappointing.\(^20\)

14. The Centre welcomes the Government’s commitment towards human rights education (HRE) in Action 21. However, we refer to our previous submission on the

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\(^17\) See the Castan Centre’s Submission to the National Human Rights Action Plan: Draft Baseline Study [http://www.law.monash.edu.au/castancentre/publications/baseline-study-sub.pdf], at 12-16, esp. 12 and 13. See also eg S Joseph, ‘The Howard Government and the International Human Rights System,’ 27 Australian Yearbook of International Law 45, 52. The current (ALP) Government seems to have a more positive attitude to human rights generally (see eg its response to the UPR Recommendation), but continues to ignore significant recommendations of the Human Rights Treaty Bodies in relation to eg legal remedies. At 14 the Centre also recommends that a permanent human rights representative be attached to Australia’s Permanent Mission to the UN in Geneva.


\(^20\) See UN Doc A/HRC/17/10/Add.1 “Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review” – reply to Recommendation 43.
Baseline Study which recommends a comprehensive review be undertaken to see what is being taught as HRE and which students are being taught HRE. This would allow the Government to include human rights in a new national school curriculum and ensure that HRE forms a part of the standard Diploma or Bachelor of Education or in-service teacher training. The Centre also notes UPR Recommendation 96 (US) which advocates that Australia improve the human rights elements of training for law enforcement personnel. Additionally, the Government should be looking to give priority to human rights education for health professionals, especially in the context of the Northern Territory Emergency Response.

The human rights concerns of the general community

15. Access to justice – The Centre welcomes the Federal and Victorian Government’s commitments towards increasing access to justice in the Action Plan. In particular, we welcome the Victorian Government’s commitment in Action 36 towards establishing minimum standards to be met with regards to victims. We urge other State and Territory Governments to do the same, especially given UPR Recommendation 82 (Hungary) which recommends the Government take steps to ensure victims have access to counselling and assistance with recovery.

16. The Centre notes that legal services for Indigenous people, including interpreter services, are facing a funding shortfall. See paragraph 30 below.

17. Counter-terrorism – The Centre acknowledges that appropriate measures must be taken to prevent acts of terrorism, and welcomes the Government’s commitment in Action 37 to monitor the impact on human rights of these measures. However the Centre urges the Government to take into account relevant UN Treaty Body and Special Procedures recommendations to ensure that counter-terrorism measures do not unduly limit human rights.

18. The use of force by police – The Centre notes that the Government accepted UPR Recommendation 89 (Malaysia) which advocates the independent investigation of police use of force only insofar as it considers oversight mechanisms are already in place to scrutinise police use of force. However, the Centre refers to a recent article by the Human Rights Law Centre’s Anna Brown on the need for a truly independent

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23 See UN Doc A/HRC/14/20/Add.4 “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” – paragraph 100.
24 See UN Doc A/HRC/4/26/Add.3 “Report of the Special Rapporteur on the Promotion and Protection of Human rights and Fundamental Freedoms while Countering Terrorism” – paragraphs 64-72, esp. paragraphs 69, 70 and 72 which deal with increased investigative powers of the Australian Security Intelligence Organisation and increased powers of detention and control in Australia.
body to investigate police-related deaths. The Centre urges the Government to implement this recommendation as a priority.

19. **People trafficking** – The Centre welcomes the Government’s efforts to prevent people trafficking. However, even when effective remedies are provided for in law, victims need to be made aware of their existence through the wide availability of information in accessible formats. The Government should also endeavour to provide free legal aid for all levels of proceedings in which trafficking victims are involved. Most importantly, the Centre urges the Government to implement a Federal scheme to compensate victims of crime. Since trafficking is regulated and prosecuted at the federal level, it makes sense to offer a compensation scheme which is run at this level. Additionally, harm often occurs while the victim is outside Australia, and the federal Government is best-placed to address harms occurring overseas.

20. **Workers’ rights** – The Centre notes UPR Recommendation 100 (Israel) which advocates for the removal of restrictions in law and in practice on the rights of workers to strike. Actions 59 and 60 accept this recommendation only insofar as the Government considers the *Fair Work Act 2009* to be adequate protection of workers’ rights. However, the Concluding Observations of the Committee on Economic, Social and Cultural Rights, to which the recommendation specifically refers, highlights aspects of the *Fair Work Act 2009* which should be amended. Accordingly, the Government should lift restrictions on “pattern barging”, the pursuit of multi-employer agreements and matters that are not “permitted”, and to remove the secret ballot requirements for workers who wish to take industrial action.

21. **Climate change** – The Centre notes UPR Recommendation 31 (Maldives) which recommends a rights-based approach to climate change, and urges the Government to consider reviewing its climate change policy in light of a rights-based approach.

22. **Poverty** – The Centre notes UPR Recommendations 31 & 32 (Ghana, Pakistan) which refer to the CESCR’s recommendations in relation to poverty reduction and social inclusion. Accordingly, the Centre urges the Government to adopt evaluation

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28 UN Doc E/C.12/AUS/CO/4, recommendation 19.
measures to assess the impact of its poverty and social reduction strategies and identify its weaknesses and provide in its next report to the CESC comparative data disaggregated by gender, age, rural and urban populations, as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty.  

Aboriginal and Torres Strait Island peoples

23. **Self-determination and consultation** – The Centre welcomes the Government’s commitment to work with the National Congress of Australia’s First Peoples in Action 63. The Centre notes that Action 63 should include a commitment that the National Congress, with affected Aboriginal and Torres Strait Islander communities, will be consulted if any further suspension of the *Racial Discrimination Act 1975* (Cth) is contemplated.  

Furthermore, the Centre recommends that the Government implement the recommendations of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People with regards to increasing the number of Aboriginal and Torres Strait Islander people’s representatives and participation in all levels of government, including legislative, executive and judicial, as well as strengthening the Aboriginal and Torres Strait Islander peoples’ own governance structures.  

The Centre also notes UPR Recommendation 103 (Slovenia) which recommends that the Government undertake a formal agreement with Indigenous peoples.

24. The Centre welcomes the Government’s efforts to strengthen native title arrangements in Action 64. However, the Centre notes UPR Recommendation 102 (UK) which advocates reforming the *Native Title Act 1993* (Cth) to amend the strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life.  

The Centre also recommends that the Government promote and facilitate greater Aboriginal and Torres Strait Islander peoples’ representation and participation in native title processes, including in decisions over Aboriginal and Torres Strait Islander heritage sites or objects.

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30 See also UPR Recommendation 26 (Slovenia).
32 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraphs 84 to 90, esp. paragraph 85 which recommends that the Government undertake a comprehensive review of all laws and administrative practices related to lands and natural resources to ensure that they align with international standards concerning indigenous rights to lands, territories and resources.
33 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraphs 87 and 88.
25. The Centre welcomes the Government’s commitment to consultation in Action 65. The Centre urges the Government to take into account the Special Rapporteur’s specific observations and recommendations on the Northern Territory Emergency Response in relation to the *Stronger Futures in the Northern Territory 2011 Bill.*[^34] In particular, the Centre notes the Special Rapporteur’s concern about restrictions placed on Aboriginal communities in the NT and racially discriminatory treatment of Indigenous individuals and communities by the NTER.[^35] The Centre strongly urges the Government to ensure that the *Stronger Futures Bill* is compatible with the Special Rapporteur’s recommendations, especially that any provisions identified as racially discriminative should be reformed or adopted only with the acceptance, following consultation, of affected Aboriginal communities.[^36] Of particular concern are compulsory income management in relation to school attendance and the continued restrictions on pornography and consideration of customary law in bail and sentencing hearings, restrictions which have been insufficiently consulted in affected communities.

26. The Government should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration on the Rights of Indigenous Peoples.[^37]

27. **Health, housing, work and education** – The Centre welcomes the Government’s commitment to closing the gap in life opportunities between Aboriginal and Torres Strait Islanders and the rest of the Australian population. However, the Centre urges the Government to take into account the relevant UN reports and special procedures in developing a strategy. Specifically, the Government should address as a matter of urgency, the qualitative and quantitative inadequacy of educational services for remote communities; ensure that Indigenous communities have control over the

[^34]: See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 106.

[^35]: UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” Appendix B – paragraphs 9 and 13. Restrictions placed on Aboriginal communities were on alcohol consumption, pornographic material and vested community rights. Racially discriminatory provisions included s 31, compulsory acquisition of land over 64 Aboriginal communities be Government; s 47, permitting Government to take control of Aboriginal town camps; s 51 which suspended operation of the Native title Act over areas held by leases per s 31 and s 47; Part 5 which vested broad powers in the Minister for Families, Housing, Community Services and Indigenous Affairs to intervene in Aboriginal community councils and associations; the introduction of compulsory income management; Part 6 which limited consideration of Indigenous customary law or cultural practice; and the conferring of special powers on the Australian Crime Commission to collect information on alleged crime affecting Indigenous communities.


allocation of resources, by providing local governance monitoring structures which would include representatives of Indigenous people thus guaranteeing that decisions meet community-specific needs; and allocate additional funding to health promotion programmes concerning responsible alcohol use, and to support, counselling and rehabilitation services. With regard to education, the Government should ensure that educational programming in Indigenous communities is more self-determined, including Indigenous systems of teaching, cross-cultural curricula and bi-lingual programming. With regard to employment, the Centre recommends that the Government ensure that adequate funding and employment opportunities are in place before reforming or abolishing existing welfare and social security programmes for Aboriginal and Torres Strait Islander communities. With regard to housing, the Government should avoid imposing or promoting housing arrangements that would undermine Aboriginal and Torres Strait Islander peoples’ control over their lands.

28. The stolen generations and stolen wages – The Centre welcomes the Victorian Government’s commitment to provide funding specifically for members of the Stolen Generations in Action 79, and urges other State, Territory and Federal Governments to make similar commitments. The Centre also notes UPR Recommendation 97 (Slovenia) which recommends the establishment of a National Compensation Tribunal as recommended by the “Bringing Them Home” report to provide compensation to Aboriginal and Torres Strait Islander people negatively affected by the assimilation policy.

29. Freedom from discrimination – See paragraph 25 above in relation to the Stronger Futures Bill.

30. Community safety and the justice system – The Centre is concerned that Action 84 contains a reference to Compulsory Income Management, which would potentially

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38 See UN Doc A/HRC/14/20/Add.4 (Special Rapporteur on the Right to Health) – paragraph 100. See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 94, which recommends comprehensive, culturally appropriate medical training for health professionals in Indigenous communities and health services in the language of the community.

39 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph, 95. See also paragraphs 96 and 97 which recommend equal educational opportunities be provided in remote areas, including Aboriginal homelands, and the reform of the Northern Territory Government policy that the first four hours of school be taught in English only.

40 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 99.

41 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 100. See also UN Doc A/HRC/4/18/Add.2 “Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living” – paragraphs 133-135.

42 See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 83.
work against the Special Rapporteur’s recommendation that government services in communities should be more self-determined.\textsuperscript{43} The Centre also notes that the Government should be committing adequate funds to community-controlled legal services to achieve, at a minimum, parity with mainstream legal aid services, with particular priority given to the guarantee of interpreters in criminal proceedings.\textsuperscript{44} The Government should also be investigating new methods of recruitment and retention of correctional services staff of Aboriginal and Torres Strait Islander descent.\textsuperscript{45}

31. The Centre welcomes the Government’s commitment in Action 85 to monitor Indigenous deaths in custody, however it must implement all unimplemented recommendations of the Royal Commission into Aboriginal Deaths in Custody.\textsuperscript{46}

32. The Centre also welcomes the Government’s commitment to trial the Sworn Community Engagement Officers Program in Action 89 and strongly encourages the Government to roll out the program across the country after the trial in the Northern Territory.\textsuperscript{47}

33. The Centre again welcomes the Government’s commitment to alternative sentencing options in Action 93. We strongly encourage the Government to roll this program out across the country, especially in light of UPR Recommendation 94 (Austria) which recommends the trial of non-custodial sentences.

**Women**

34. *Freedom from violence* — The Centre welcomes the Government’s commitment to implement the *National Plan to Reduce Violence Against Women and their Children* in Action 100.\textsuperscript{48} However, the Centre notes UPR Recommendation 76, 77 and 79 (Azerbaijan, Canada, Norway) which highlight the need to speed up implementation. The Centre also notes UPR Recommendation 80 (Mexico) which advocates that the *National Plan to Reduce Violence Against Women and their Children* should involve an independent supervision mechanism that involves civil society organisations and takes into account the specific situation of Indigenous women and migrants. We

\textsuperscript{43} See UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 93.

\textsuperscript{44} See also UN Doc A/HRC/15/37/Add.4 “Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people” – paragraph 104. See also UPR Recommendation 92 (Bolivia) which recommends that translators be available especially to vulnerable Indigenous women in remote communities.

\textsuperscript{45} See UN Doc A/HRC/14/20/Add.4 (Special Rapporteur on the Right to Health) – paragraph 100.


\textsuperscript{47} See also UPR Recommendation 95 (Austria) which recommends the encouragement of stronger contacts and communication between Indigenous communities and law enforcement officers.

refer to the Concluding Observations of the Committee for the Elimination of Discrimination Against Women and urge the Government to adequately fund the National Plan to Reduce Violence Against Women and their Children as a matter of urgency.49

35. Gender equality in public life – The Centre welcomes the Government’s commitment to gender equality in public life in Action 113. However the Centre notes UPR Recommendation 55 (Norway) which advocates for the adoption of a 40% target for public and private sector, whereas Action 113 only commits to achieving gender balance without setting a target. The Centre urges the Government to consider special temporary measures as recommended in the Concluding Observations of the Committee for the Elimination of Discrimination Against Women.50

36. Freedom from discrimination – The Centre welcomes the Government’s positive steps towards eliminating discrimination against women and refers to the Concluding Observations of the Committee for the Elimination of Discrimination Against Women in urging the Government to provide adequate funding to the Human Rights Framework in this regard.51

37. Women in the Australian Defence Force – The Centre welcomes the Government’s commitments to remove its reservations to CEDAW and to remove the SDA exemption with regard to gender restrictions in the Australian Defence Force.

Children and young people

38. Federal Children’s Commissioner – The Centre welcomes the Government’s commitment in Action 121 to explore options for the creation of a Federal Children’s Commissioner and encourages the Government to do so.

39. Freedom from violence – The Centre welcomes the Government’s efforts to protect children from violence. The Centre notes that children who are at risk of violence may be intersectionally vulnerable and encourages the Government to pay special attention to children in marginalised and disadvantaged groups.52

40. Suicide and self-harm – The Centre welcomes the Government’s commitment to increasing access for young people to primary mental health care services.

41. Children in out-of-home care – The Centre refers to the Concluding Observations of the Committee on the Rights of the Child and urges the Government to strengthen current programmes of family support by targeting vulnerable families to reduce the

49 See UN Doc CEDAW/C/AUL/CO/7 Recommendation 29. See also UPR Recommendation 73 (Iraq) which advocates for the adoption special legislation to prevent violence against women.
50 See UN Doc CEDAW/C/AUL/CO/7 Recommendation 27. See also UPR Recommendation 52 (Israel).
51 See UN Doc CEDAW/C/AUL/CO/7 Recommendation 25.
52 See UN Doc CRC/C/15/Add.268 Recommendation 43(e).
number of children in out-of-home care; strengthen its support for foster care including improving equal access to medical care by children in foster care; and strengthening supervision of foster care and establishing regular review of this kind of placement with a view to returning the child to his or her natural family.\textsuperscript{53}

42. \textit{Juvenile justice} – The Centre refers to the Concluding Observations of the Committee on the Rights of the Child and urges the Government to bring the system of juvenile justice fully into line with the Convention on the Rights of the Child, in particular articles 37, 40 and 39.\textsuperscript{54}

\textbf{Older people}

43. The Centre welcomes the efforts of the Government towards protecting the rights of older people.

\textbf{Gay, lesbian, bisexual and sex and/or gender diverse people}

44. \textit{Same-sex relationships} – The Centre notes UPR Recommendation 70 (Norway) – which calls on the Government to recognise same-sex marriage.\textsuperscript{55}

45. \textit{Freedom from discrimination} – The Centre welcomes the Government’s commitment in Action 140 to introduce new protections against discrimination and harassment based on sexual orientation and gender identity.

46. \textit{Freedom from violence} – The Centre welcomes the Victorian Government’s commitment in Action 142 to fund a Gay and Lesbian Advocacy Unit in Victoria Police, and strongly encourages other State and Territory Governments to do the same.

47. \textit{Sex and/or gender diverse people} – The Centre welcomes the commitment of Commonwealth, State and Territory Governments in Action 143 to develop a consistent approach to legally changing sex.

\textbf{People at risk of experiencing homelessness}

48. \textit{Housing} – The Centre welcomes the Government’s continuing efforts towards reducing homelessness. The Centre suggests that Action 151 should include a review of State and Territory residential tenancy laws in order to ensure compliance with international human rights standards.\textsuperscript{56} The Centre urges the Government to ensure

\textsuperscript{53} See UN Doc CRC/C/15/Add.268 Recommendation 38.
\textsuperscript{54} See UN Doc CRC/C/15/Add.268 Recommendation 74.
\textsuperscript{56} See UN Doc A/HRC/4/18/Add.2 “Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living” – paragraph 131. See also paragraph 132 which recommends that
the availability of an adequate housing stock suitable for people with diverse housing needs, including culturally appropriate housing that diverges from European-style housing and appropriate housing for people with disabilities. The Centre encourages the Government to seriously reflect upon the current homeownership paradigm and its possible negative impact on housing affordability and housing availability, including rental housing.

49. Freedom from discrimination – The Centre welcomes the Government’s efforts towards reducing discrimination against people at risk of or experiencing homelessness.

50. Homelessness and priority groups – The Centre encourages the Government to continue to prioritise the reduction of Indigenous over-representation among the homeless.

People with disability

51. The Centre welcomes the Government’s positive steps towards upholding and safeguarding the rights of people with disability. However the Centre refers to the Concluding Observations of the Committee for the Elimination of Discrimination Against Women and urges the Government to conduct a comprehensive review of the situation of women with disability.

Carers

52. The Centre welcomes the Government’s commitment to the rights of carers.

People in prisons

53. Health – The Centre recommends that the Government review practices in relation to health information exchange within the prison system, as well as between prisons and community health providers. The Government should also seek to increase engagement with community health providers by prisons and consider renewed assessment of, and investment in, the primary health care sector throughout the prison system, especially in relation to health promotion activities. Whilst the Centre welcomes Action 179, it urges the Government to ensure that the terms of laws which criminalize poverty and homelessness or which disproportionately impact the poor or the homeless, such as begging laws, public drinking laws and public space laws, should be revised and amended. The Centre refers to the Concluding Observations of the Committee for the Elimination of Discrimination Against Women and urges the Government to conduct a comprehensive review of the situation of women with disability.


See UN Doc A/HRC/14/20/Add.4 (Special Rapporteur on the Right to Health) – paragraph 100.

See UN Doc CEDAW/C/AU/L/CO/7 Recommendation 43. See also UPR Recommendation 39 (Denmark)
reference of a working group on Mental Illness and Cognitive Disability include the possibility of increasing resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons.  

54. **Oversight mechanisms** – See paragraphs 18 and 31 above for a discussion of deaths in custody. The Centre notes UPR Recommendation 91 (New Zealand) which advocates that all deaths in custody be reviewed by independent bodies. The Centre also notes that the successful ratification of the OPCAT as mentioned in Action 2 above will have a positive impact on the effectiveness of oversight mechanisms.

55. **Freedom of discrimination** – The Centre welcomes the Government’s commitment to continue to provide funding to community legal centres providing legal help and information to people in custody. However, the Centre notes that through-care programs supporting prisoners after they leave prisons are underfunded. The Centre urges the Queensland Government to repeal amendments to the *Corrective Services Act 2006* relating to the selling or exhibiting of prisoner art whilst the artist is in custody.

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

56. **Assessment of protection claims and non-refoulement obligations** – See paragraph 7 above on Australia’s non-refoulement obligations in cases where the person may face the death penalty.

57. **Immigration detention** – UPR Recommendations 126 & 132 (Pakistan, Guatemala and Switzerland) must be noted – the Centre cannot recommend strongly enough that the Government abolish mandatory detention. However, if mandatory detention is to continue, the Government should ensure that appropriate measures are taken to safeguard the health and safety of detainees. Specifically, on-site interpreters should be provided in immigration detention facilities to render health services more accessible; detainees with a history of torture and trauma should be placed in community detention; appropriate further training should be provided to

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62 See UN Doc A/HRC/14/20/Add.4 (Special Rapporteur on the Right to Health) – paragraph 100.
65 Note UPR Recommendations 124 & 125 (Slovenia and Ghana) which refer to Australia’s non-refoulement obligations.
non-medical personnel who are involved in identifying or referring immigration detainees with potential mental health issues; and assess provision of mental health services to Christmas Island detainees as a matter of priority.\(^\text{67}\)

58. The Centre notes with concern the wording of Action 191 which states that the Government will conduct a review to determine if any treaty body recommendations can be accepted as consistent with existing policy. We refer to UPR Recommendation 38 (Jordan) which calls on the Government to consider implementing human rights treaty body, UNHCR and special procedures recommendations and urge the Government to review and amend existing policy to ensure that it is compatible with Australia’s international human rights obligations.

59. The Centre notes that the Government commits in Action 192 to ensuring that immigration detention is not indefinite or arbitrary. We refer to an open letter from Liberty Victoria and the NSW Council for Civil Liberties and urge the Government to review the situation of people in immigration detention who have been found to be genuine refugees but have received adverse security assessments from ASIO.\(^\text{68}\)

60. \textit{Refugees, humanitarian entrants and asylum seekers in the community} – The Centre welcomes the Government’s efforts to provide support and services to refugees, humanitarian entrants and asylum seekers in the community.

61. \textit{Access to justice} – The Centre welcomes the Government’s commitment in Action 206 to continue to fund community legal services providing legal advice to refugees and asylum seekers, however the Centre recommends that the Government increase its efforts to ensure the rights of the defence.\(^\text{69}\) The Centre also notes with concern reports of bias towards Afghan claimants amongst refugee claim reviewers.\(^\text{70}\)

62. \textit{Community attitudes and multiculturalism} – The Centre notes UPR Recommendations 59 and 65 (Algeria and Russia) which highlight a need to halt discrimination particularly against Muslim communities, recent migrants from Africa, and foreign (primarily Indian) students.

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\(^{67}\) See UN Doc A/HRC/14/20/Add.4 (Special Rapporteur on the Right to Health) – paragraph 100.

\(^{68}\) The open letter is available here: <http://libertyvictoria.org/sites/default/files/Liberty%20Victoria.NSWCCL%20Open%20Letter%20to%20AG%20Nicola%20Roxon.18.01.12.pdf>


Monitoring

63. *Data collection and analysis* – The Centre welcomes the Government’s commitment to collaborating with NGOs in developing data collection for an interim NHRAP report.