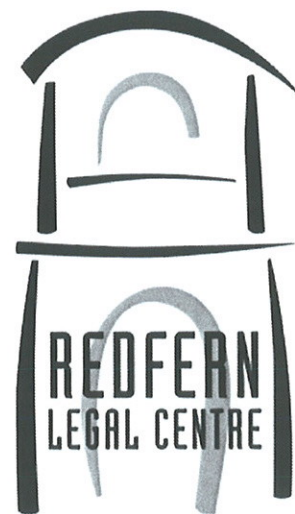


Redfern Legal Centre



National Human Rights Action Plan Secretariat
Federal Attorney Generals Department
By Email: nhrap@ag.gov.au.

9 September 2011

Attention: National Human Rights Action Plan Secretariat

Please find attached our policy submission: *Submission to Consultation on National Human Rights Action Plan Baseline Study*.

We would welcome the opportunity to meet with you to further discuss our submission should that be suitable.

Yours faithfully,

Redfern Legal Centre

A handwritten signature in blue ink, appearing to be "JS", is placed below the typed name.

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SUBMISSION:

Submission to Consultation on National Human Rights Action Plan Baseline Study

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DATE:

9 September 2011

Redfern Legal Centre

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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's view in summary

RLC welcomes the opportunity to comment on the National Human Rights Action Plan Baseline Study.

Redfern Legal Centre is concerned that the Baseline Study falls significantly short of meeting both its potential and its requirements.

The document as it stands is a compilation of government initiatives, plans and achievements directed at a range of 'minority groups.' While the government has introduced many effective initiatives for each of these groups, a baseline study is an opportunity to comprehensively document the state of play for human rights in Australia.

The starting point for doing this are the obligations contained in the seven human rights treaties to which Australia is a party, and the Baseline Study should be reorganised to reflect these obligations. It is important that the study contain an analysis of all obligations, including social, economic and cultural rights.

In particular, a Baseline Study could consider:

- a). The full range of human rights obligations that Australia is committed to upholding as a party to the seven core human rights treaties;
- b). An analysis of the indicators, which could be used to assess the extent to which those human rights are observed in Australia;
- c). An assessment of where Australia lies in relation to each of those indicators.

We recognise that developing human indicators is a resource intensive task, and that the UNHCR and other nations are currently working hard on this. Given Australia's history in leading the development of human rights principles at the international level in areas such as the Convention on the Rights of People with Disability, it would be fitting for Australia to devote resources to lead this important task. This is particularly relevant for Australia given we do not have a Human Rights Act.

Once indicators are developed the action plan should then set goals in relation to each of these indicators.

The Baseline Study is too heavily weighted to a discussion of civil and political rights, and fails to discuss many of the fundamental social, economic and cultural rights. Further, by compartmentalising issues according to gender or race, the study fails to deal with the whole experience of some of our most vulnerable citizens, for example women with disability, or children who are Aboriginal.

3. RLC's recommendation:

Our over-arching recommendation is that the Australian government re-consider its methodological approach to the baseline study. The baseline study should outline the full range of Australia's human rights obligations, indicators for meeting those obligations and an assessment of where Australia lies in relation to each of those indicators.

4. Responses to specific issues:

In its current form, it is very difficult to provide meaningful comments in relation to the Baseline analysis. Accordingly, we have only outlined a few key points that fall within our areas of expertise that we consider important for inclusion.

Australia's Human Rights Framework

Given this section describes the framework for human rights in Australia, it is important that it makes it clear from the outset that Australia does not have a human rights act. The National Human Rights Consultation process should be described, as should the fact that some states have elected to legislate for their own human rights charters.

1.1.3 Consolidation of Anti-Discrimination Legislation

In the absence of national human rights legislation, our Federal discrimination laws are our most powerful tool in protecting human rights in Australia. Our discrimination laws are also the major mechanism by which we implement the seven core UN Human Rights treaties to which Australia is a party. Therefore, this section requires a great deal more information. International equality law obligations should be described, indicators set, and then the current discrimination law framework should be set out and rated against these indicators.

Particular emphasis should be given to the process of enforcing these obligations within Australia, with reference to the most recent comprehensive review of a piece of discrimination legislation at a domestic level: *The Senate Standing Committee on Legal and Constitutional Affairs Review of the Effectiveness of the Sex Discrimination Act 2008 (the SDA Review)*. In particular the following should be emphasised:

- The enforcement process for federal discrimination law, in particular the conciliation process and the right to proceed to the Federal Court or Federal Magistrates Court. The criticisms of this process in the SDA Review at Chapter 6 should be outlined.

- The fact that anti-discrimination law is reactive rather than proactive, and that anti-discrimination legislation fails to address systemic discrimination, including the SDA Review comments at Chapter 6
- Issues of 'intersectionality' as highlighted at section 4.5 of the SDA Review.

The two submissions by the National Association of Community Legal Centres to the Attorney General on the consolidation of Federal discrimination law provide more detail in relation to these points¹.

2.1 Access to Justice

Adequate resourcing of access to justice agencies deserves greater consideration within the Baseline study. While we agree that the increased funding in the 2010-2011 budget is welcome, more detailed references to questions of funding and resourcing should be made. Examples are the findings of both the Access to Justice Taskforce and the Legal and Constitutional Affairs References Committee, which noted that the legal aid system is not adequately funded². The disparity in wages between community legal centre and legal aid staff should also be noted³.

The needs of particular disadvantaged groups in relation to accessing justice also need to be emphasised. In particular, the barriers (and government initiatives) relating to access to justice for members of culturally and linguistically diverse communities, indigenous people and people with disability should be emphasised.

2.2 and 2.3 Counter Terrorism Measures and Use of Force by Police

The Baseline Study should note that the most significant human rights issue in Australian law enforcement is the abuse of police authority and powers. To appropriately assess Australia's commitment to protecting human rights, a wider view must be taken than is contemplated in sections 2.2 and 2.3 of the Baseline Study.

Abuse of authority and power by law enforcement agencies affects the assertion of other human rights. To include only the most topical breaches of human rights by law enforcement agencies (anti-terror powers and use of tasers) is to ignore much of the daily damage to the community. Failure to investigate reports of crime for discriminatory reasons, heavy-handed investigation procedures, and lengthy prosecution delays have serious consequences for both victims and defendants.

The law enforcement community applies its own interpretation to legislative safeguards of human rights. The prevalence of a sceptical approach towards human rights in the NSW Police Force is evident in the Police Association of New South Wales 2011 Pre-Election Submission to the NSW Government where it recommends reforms to restrict the right to silence. The Association advocates that "...such change makes it more difficult for criminals to exploit the law, improves police investigations, and ensures that adequate

¹ March and April 2011, can be viewed at <http://www.rlc.org.au/about-us/submissions.html>

² December 2009, page 1.

³ See Mercer report 2011 viewed at <http://www.naclc.org.au/news/2479.html>

safeguards exist to prevent police abuse...⁴". Devoting resources to a cultural shift in the law enforcement community may be one of the most efficient steps that could be taken as part of the Human Rights Action Plan.

The legislative trend to specifically exclude fundamental rights from alleged terror-related investigations has now been expanded to include suspected organised crime. The powers of the Australian and New South Wales Crime Commissions are inquisitorial and secretive. It is an offence to reveal the existence of a Crime Commission enquiry, except in the course of seeking legal advice. This is a highly effective threat that does not involve the use of force. It is worth noting that the NSW Crime Commission has attracted extended scrutiny because of allegations of widespread corruption, and may soon be the subject of a Parliamentary Inquiry.

In relation to the use of tasers, we are concerned about the continuing references to these devices as 'non-lethal', despite the number of deaths associated with their use in Australia and overseas. These devices are less likely to be lethal, but clearly still endanger life. The perpetuation of the misconception that they are non-lethal fosters an environment of inappropriate use of these devices.

3.1.6 Aboriginal and Torres Strait Islander People - Freedom from violence

In relation to the experience of Indigenous people in Australia, we are concerned about the persistent gap between policy statements and the way in which Indigenous people are treated by police, and this should be noted in this section.

We note the reference to overrepresentation in the remand population, a situation that is particularly bad in NSW compared to other states. One key element of it is a lack of cultural awareness on the part of general duties police officers. This lack of awareness affects the exercise of discretion in relation to Indigenous people. An incident that may otherwise result in a caution can result in a charge for an Indigenous person. Cultural factors relevant to bail may not be seen as cultural factors, simply as the preference of the Indigenous accused. The lack of knowledge about modern Indigenous culture severely impedes the effectiveness of the reforms that have been made.

3.2.1 Women - Freedom from Violence

The starting point for a section on women should be the Convention on the Elimination of Discrimination against Women (CEDAW).

The section should make the point that sexual assault and domestic and family violence are gendered crimes, most often perpetrated by men against women.

The section does not mention homelessness as an issue for women escaping violence. Additional research findings could include reference to *The Road Home: A National Approach to Reducing Homelessness*.⁵ This report makes the point that domestic and family violence is the principal cause of homelessness among women. Fifty-five per cent of

⁴ Police Association of New South Wales, 2011 Pre-Election Submission, pp.18-19

⁵ *The Road Home: A National Approach to Reducing Homelessness*, Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, White Paper 2008.

women with children and 37 per cent of young single women who seek assistance from specialist homelessness services do so to escape violence.⁶ Many victims of violence will not seek assistance from specialist homelessness services but will stay with friends or family members in temporary arrangements.

Many service providers report that homelessness driven by domestic violence is different from other forms of homelessness. Many women who escape abusive, violent relationships return to the perpetrator numerous times, and cycle in and out of homelessness. This may be because they have no money, family support or stable housing or their partner promises to stop the violence.⁷

Safety is often an ongoing problem for people who are escaping violence. Many women and children continue to experience violence after they have left the family home. In the best cases, victims of violence are supported both to find a safe home and to make contact with police to bring the violence to an end.

The section should refer to the recommendations of the Australian Law Reform Commission Family Violence Inquiry,⁸ the stated objective of which is to improve safety for women and children in the context of family violence through recommendations for the reform of legal frameworks. In particular, the chapters on 'Specialisation' and 'Information Sharing' provide specific recommendations that would protect and promote the human rights of women affected by domestic violence.

The comments on state and territory initiatives focusing on the reduction of violence should mention the Domestic Violence Practitioner Scheme (DVPS) which is funded to operate in conjunction with the Women's Domestic Violence Court Advocacy Service (which is mentioned). The DVPS provides legal advice to women in domestic violence related matters at 32 courts across New South Wales.

3.2.2 Women – Right to Gender Equality

The section on the right to gender equality covers the gender pay gap, but could give more emphasis to the gap in superannuation savings between men and women, particularly as women live longer than men. In addition, 70% of carers are women, but the section does not mention the role of women as carers, the low rates of carer payments and the reduction in working hours and the impact this has on the gender income gap and the accrual of superannuation.

Reproductive rights and access to free and safe abortions are not mentioned at all in the section on women, despite the variation in rights to abortion across the states and territories, and the prosecution in Queensland in 2010.

The section does not mention our overseas aid programs and the need for them to advance gender equality in developing countries.

⁶ Ibid Chapter One, 'Scoping the Problem'.

⁷ Ibid Chapter One, 'Scoping the Problem'.

⁸ Family Violence - A National Legal Response (ALRC Report 114), Australian Law Reform Commission, 2011.

The “Issues a National Action Plan could address” should include implementing the Sex Discrimination Commissioner’s Gender Equality Blueprint 2010.

3.2.3 Women – Freedom from discrimination

Having had a *Sex Discrimination Act* for more than 25 years, it is clear that the individual complaint system is not of itself sufficient to ensure freedom from discrimination for women.

The “issues a National Action Plan could address” should include implementing the remaining recommendations of the Senate Report “Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality”. In particular it should implement the recommendation that the Sex Discrimination Commissioner should be able to initiate a complaint without the need for an individual complainant.

3.4.2 Older people – Freedom from discrimination

This section looks exclusively at discrimination in employment. There are other issues that could be included such as access to public transport, access to affordable housing and to high quality aged care.

In the future, as more information is provided online, and more transactions are done online, there may be issues of access to information and services for older people who do not use the internet.

3.5.2 Same-sex relationships - Freedom from violence

The chapter should mention the Inner City Legal Centre’s Safe Relationships Project, funded by the Public Purpose Fund, as an example of an initiative to address domestic violence affecting gay, lesbian, bi-sexual, and sex or gender diverse people. The project provides court assistance to persons seeking restraining orders against a violent partner.

3.7 People with Disability

While this section is more detailed than others, we consider that some sections fail to provide a balanced and holistic view in relation to the experience of people with disability in Australia. The obligations contained in the Convention on the Rights of People with Disability (CRPD) should be the starting point.

Almost completely absent from the Action Plan is an assessment of Australian compliance with CRPD obligations relating to exploitation; liberty and security of the person; freedom from torture or cruel and inhuman or degrading treatment or punishment; access to healthcare; participation in political and public life and cultural life; participation in recreation, leisure and sport; and access to justice. These issues need further attention and the comments documented in the National Disability Strategy Consultation Report, 2009, should be noted⁹.

Community Awareness

A section dealing with the dissemination of information and the targeting of both disability and disability program awareness in the general community, in addition to the disability

⁹ Viewed at http://www.fahcsia.gov.au/sa/disability/pubs/policy/community_consult/Pages/default.aspx

community would be beneficial. Community understanding or knowledge of disability itself, which has a strong an impact on the establishment of and implementation of these programs, is disregarded in the draft.

Sector Input

In outlining the disability programs there is no acknowledgment of the importance of input from the disability community in Australia regarding program effectiveness, nor note of any programs to implement meaningful consultation with the sector. The focus is on what the Government deems to be preferable. No reference is made to evaluating whether, and why, the programs noted have or have not worked. With this in mind, a recommendation could be made to increase the input of people with a disability into government programs that impact on their lives.

Legal Capacity

The section on 'legal capacity' is broader than merely issues of non-therapeutic sterilisation. Sterilisation could also be included in an additional topic on health. This section could include issues such as equal recognition before the law, discriminatory law, policies and practice, access to financial services, voting, public office, guardianship, estate management and mental health laws and inability to access legal representation.

3.9.4 People in prisons – Discrimination on the basis of irrelevant criminal records

Crimtrac conducted 2.7 million checks for employment purposes in 09/10, compared to fewer than 0.5 million in 02/03¹⁰, so it appears that criminal record checks are becoming ubiquitous in recruitment. Added to this is the ability of employers to search for reports of criminal charges and convictions via search engines.

The "Issues a National Action Plan could address" should include legislating for an enforceable right against discrimination on the ground of irrelevant criminal record. It should also include education for employers and accommodation and service providers about making decisions about applicants for jobs, accommodation or services who have criminal records.

¹⁰ Crimtrac Annual Report 2009/2010, p60