

Our reference: PF:FG:711

1 March 2012

Via e-mail: [nhrap@ag.gov.au](mailto:nhrap@ag.gov.au)

Dear Sir/Madam

### **Comments on Australia's National Human Rights Action Plan Exposure Draft**

1. The Australian Centre for Disability Law (ACDL) is a community legal centre which specialises in disability discrimination and human rights law and policy. We provide legal advice and representation to persons with disability and their associates and undertake law reform, continuing legal education, and community legal education activities.
2. ACDL congratulates the Commonwealth Attorney-General's Department on the emphasis and visibility of measures to promote, protect and fulfil the human rights of persons with disability in the proposed National Human Rights Action Plan. However, we set out below a number of comments and recommendations to further strengthen and broaden measures in this area.

### **Australia's international human rights obligations**

#### **Priority 13**

3. Note that there is a typographical error in this priority area. *Disability for All* should read *Development for All*.
4. In our view there are two further priorities that ought to be incorporated into the *Development for All strategy*:
  - 4.1 The Australian Government ought to fund the Pacific Disability Forum to build the capacity of disabled peoples' organisations in the region to engage with regional governments in relation to disability rights and development issues;
  - 4.2 The Australian Government ought to fund a regional Disability Law Centre to assist persons with disability in the region to learn about and pursue their human rights. This would include the provision of assistance to disabled peoples organisations to engage with regional

governments in the development and review of legislative measures related to the human rights of persons with disability.

## **Legal protections**

### **Priority 18**

5. Priority 18 refers to consolidation of Commonwealth anti-discrimination law which is to involve consideration of the design of the compliance regime. In this respect, in our submission, the Action plan ought to state that the aim of this initiative is to improve the effectiveness and accessibility of compliance and enforcement measures. Key priorities in this respect are providing the Australian Human Rights Commission (**AHRC**) with genuine investigation functions (and associated compulsory powers), providing for the AHRC to make own motion complaints, providing for representative organisations to have standing to bring complaints and removing the risk of adverse costs orders.

### **Priority 20**

6. The Victorian Government's Prejudice Motivated Crime Strategy ought to be part of a national strategy in relation to bias crimes, including vilification. This ought to include the formulation of model bias crime provisions to be included in the *Model Criminal Code of Australia*.

## **Australia's Human Rights Framework**

### **Priority 21**

7. The human rights education funding program to non-government organisations ought to be enhanced and made a continuing program. Civil society plays a critical role in educating society and monitoring human rights and therefore must have funding security to ensure they are able to continue this important work.

### **Priority 24**

8. In our submission, it is essential that the proposed review of legislation, policies and practices for compliance with the seven treaties to which Australia is a signatory ought to be done as part of COAG process with the States and Territories. This would ensure that the review encompasses State and Territory laws, policies and practices as well as those of the Commonwealth.

9. With respect to Australia's compliance with the Convention on the Rights of Persons with Disabilities (**CRPD**) this review of legislation, policies and practices should prioritise the following:

- Restrictive practices
- Guardianship and administration laws
- Mental health laws
- Other laws providing for civil detention on the basis of disability
- Laws, policies and programs that result in the institutionalisation of persons with disability.

## **Access to Justice**

### **Priority 30**

11. The Australian Government ought to also fund disability law clinical legal education programs which increase law students' awareness of disability and human rights issues.

## **The use of force by Police**

### **Priority 38**

12. Persons with disability are grossly over-represented as accused persons and frequently experience aggravated disadvantage in their dealings with Police. In our submission, the Australian Government, in co-operation with the States and Territories, ought to develop and implement a training program for police to reduce the risk of inappropriate contact and in relation to the provision of appropriate disability adjustments at each stage of the Police process, including but not limited to, arrest, interviews, reporting and police custody.

## **Aboriginal and Torres Strait Islander Persons**

### **Priority 66**

13. There ought to be representation of Aboriginal and Torres Strait Islander persons with disability on the National Congress of Australia's First Persons and reasonable adjustments to enable their full participation.

## **Women**

14. The Australian Government ought to introduce legislation to prohibit non-therapeutic sterilisation of women and girls with disability. This is a key disability-related recommendation (recommendation 39) made by four countries in Australia's Universal Periodic Review. In our view this issue is

inappropriately dealt with as a legal capacity issue in the National Human Rights Action Plan Exposure Draft and ought to be re-situated.

### **Children and Young Persons**

15. Students with disability, particularly those who engage in atypical behaviours and behaviour of concern, continue to experience significant discrimination on the basis of disability in school education. Indeed, the situation appears to be deteriorating, rather than improving. In light of this, in our submission, the Australian Government ought to initiate a comprehensive package of measures that will ensure that children with disability are able to obtain primary and secondary education on an equal basis with others. This ought to include strengthening discrimination laws to provide increased protection, funding for disability related adjustments and supports, and teacher education.

### **Persons with Disability**

16. In our submission this section contains too many references to carers, particularly given that they have their own section. These references diminish the focus on the human rights of persons with disability. This section should solely focus on the human rights of persons with disability. In this respect we note that the CRPD makes no reference to informal carers.

### **Freedom from discrimination**

#### **Priority 155**

17. The Australian Government ought to include transport in its accessibility package by strengthening the *Disability Standards for Accessible Public Transport 2002*. In particular, the Standards ought to prevent transport providers capping the number of passengers with disability who may travel (for example, as is the case with the budget airlines two wheel-chair policies).

#### **Priority 156**

18. The Australian Government ought to invest in Communication Support Workers for persons with complex communication needs in order to further support this population in employment.

#### **Priority 157**

19. The Australian Government ought to introduce a national disability allowance in order offset the additional costs associated with disability. This allowance ought not to be means tested.

## **Legal Capacity**

20. The title of this heading should read Access to Justice given that legal capacity means the ability to make decisions in accordance with Article 12 of the CRPD.

### **Priority 171**

21. The Australian Government ought to provide additional funding to a specialist Community Legal Centre to assist persons with disability to make CRPD related human rights claims.

## **Mental Illness**

### **Priority 173**

22. The Australian Government ought to include specific measures to address the needs of persons with dual diagnosis (that is persons with psychosocial disability as well as other disability) in its National Mental Health Reform package.

## **Additional Priority Areas for Persons with Disability**

23. The National Human Rights Action Plan ought to have a priority area on access to accessible housing for persons with disability.
24. The National Human Rights Action Plan ought to have a priority area on health for persons with disability. This is pertinent given that persons with disability have a life expectancy which is twenty years less than persons without disability. The Australian Government ought to ensure that adequate health care is provided to persons with disability in order to close this gap.
25. The Australian Government ought to ensure a national adult protection system to provide for the reporting and investigation of allegations of abuse and neglect of vulnerable adults, including adults with disability living in formal disability settings. This ought to run along similar lines to the child protection scheme.
26. The Australian Government ought to develop a national strategy aimed at the prevention of removal of children based on their parent's disability and for the provision of practical parenting supports for parents with disability.

## **Persons in Prisons**

### **Priority 179**

27. The Australian Government ought to develop a comprehensive strategy to ensure the humane treatment of prisoners with disability. This strategy ought to include arrangements for the provision of disability related adjustments, including access to Auslan interpreters, access to disability-related equipment and access to prison-based rehabilitation programs.

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

28. The Australian Government ought to abolish the 10 year wait for migrants to be eligible for the Disability Support Pension.
29. The Australian Government ought to amend the *Migration Act 1958 (Cth)* to remove the ability to discriminate on the grounds of disability.

Please do not hesitate to contact us if you would like to discuss this submission further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'FG', is placed over a light blue rectangular background.

**FIONA GIVEN**  
Policy Officer