**Submission to the**

## Australian Attorney-General's Department

**on the**

# Draft National Human Rights Action Plan

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Kingsford Legal Centre
Faculty of Law
University of New South Wales
Sydney NSW 2052
☏: 02 9385 9566
✉: legal@unsw.edu.au

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## RECOMMENDATIONS

**Protection and promotion of human rights in Australia**

1. The Action Plan should include the development of a uniform approach for Australian Government dealings with NGOs and treaty monitoring bodies, which includes a uniform, funded and constructive relationship between NGOs and government departments for UN reporting processes. Measurement of this could be through:
   a. initial discussions and consultations between the 3 departments by June 2012;
   b. transferral of resources to enable one of the reporting departments to be responsible for reporting by Dec 2012 ; and
   c. training of personnel in the model used at the Office for Women by December 2012.
2. The Action Plan should include the enactment of a statutory Human Rights Act by June 2013.
3. Actions 6, 7, 11 and 19 should be retained in the Action Plan.
4. The advisory group established under Action 1 should include community representation. Any additional data collected should also be disaggregated.
5. The timeframe for Action 2 should include lodging the instrument of ratification of OP CAT with the UN by December 2012 and developing model legislation by December 2012.
6. There should be a clearer timeline attached to the review of reservations in Action 3. In addition to placing it on the agenda of the Standing Council of Treaties, the Australian Attorney General's Department should outline how each reservation could be lifted and develop a time line for the removal of each.
7. The reservations under CEDAW should be removed by June 2012 (Action 3).
8. Action 5 should be strengthened to provide that Australia will sign and ratify ILO 169 by December 2013 with this process beginning with consultation with Workplace Ministers.
9. Australia should increase its aid and development commitment to 0.7% of GNP by 2018 (Action 8).
10. Action 9 should include specific, measurable goals with a 5-10 year time frame in order to measure how human rights are being promoted and achieved within the region.
11. Action 10 should include a human rights analysis and measurable goals for each regional program and cross sectional program, and training for AusAid personnel to enable them to successfully incorporate human rights within their development programs and funding.
12. Action 12 should include monitoring and evaluation of the Australia's work with ASEAN to be implemented over a 5 year period to ensure that the best approaches are used in this work.
13. AusAid should implement a more rigorous, monitored gender focussed approach throughout all of Australia's aid programs.

14. Funding for NGO participation in advocacy at UN bodies should include a component for diverse groups, including representation of people from Aboriginal and Torres Strait Islander backgrounds, from culturally and linguistically diverse backgrounds, and of different sexual orientations, gender identities and gender, as well as people with disabilities (Action 15).
15. For each review of Australia by a UN body, funding should be provided to the NGO sector or coalition of NGOs to advocate within these arena. A target of at least 8 delegates from diverse backgrounds over a 5 year period should be funded.
16. Funding for Aboriginal and Torres Strait Islander representation in international human rights fora should be provided to Aboriginal and Torres Strait Islander organisations, rather than the Australian Human Rights Commission, for allocation.
17. Action 18 should reflect the Australian Government's commitment to strengthen Commonwealth anti-discrimination law. Further, NACLC's recommendations regarding anti-discrimination law should be adopted within the Human Rights Action Plan.
18. Action 20 should be broadened to provide that a strategy to increase understanding of prejudice motivated crime be adopted and implemented by each State and Territory .
19. Action 21 regarding human rights education should be strengthened to include:
    a. clear timelines and indicators to ensure appropriate action is taken;
    b monitoring and evaluation of community education projects to assess whether they are effective in educating the community about human rights;
    c. smaller, measurable outcomes, with timeframes, in the education curricula to ensure that these outcomes are met;
    d. initial discussions with each State and Territory by December 2012, with curricula for primary and secondary education changed to incorporate human rights education by June 2014; and
    e. monitoring and evaluation of the AHRC's community education work on a two yearly basis.
20. The effectiveness of the Parliamentary Joint Committee on Human Rights should be reviewed in 2014 in order to ensure it is working as effectively as possible (Action 22).
21. Human rights should be included in the Australian Public Service values and by the end of 2014 with proper training given to public servants about the meaning of the changes (Action 23).
22. The review of legislation, policies and practices referred to in Action 24 should begin with the recommendations that UN treaty monitoring committees have made in the last seven years and the recommendations arising out of the Universal Periodic Review. This review should be completed by 2015.
23. The review of the Victorian Charter of Human Rights and Responsibilities should include the addition of protections for economic, social and cultural rights (Action 25).

24. The Australian Government should commence discussions and consultations with each State and Territory with the aim of enacting a State or Territory Charter of Rights in each State or Territory.

**Access to Justice**

25. The Action Plan should include overarching priorities required to further access to justice nationally.

26. The Action Plan should include and prioritise a systemic focus on the connections between poverty, access to justice and the attainment of human rights.

27. The Action Plan should include overarching recommendations aimed at achieving access to justice, specifically actions should be included to:
    a. undertake a national legal needs analysis;
    b. increase funding to Community Legal Centres, Legal Aid and Aboriginal Legal Services;
    c. regulate legal costs through national regulation of the profession;
    d. allow for fee waiver provisions in all applications to federal courts and tribunals for people on low incomes or experiencing hardship;
    e. accept all applications to federal courts and tribunals as in time, without the payment of the appropriate fee;
    f. develop a specialist division of the Federal Court and Federal Magistrates Court for discrimination law matters;
    g. make federal discrimination law a costs free jurisdiction and implement other measures to increase access to the Courts for representative complaints; and
    h. enshrine a right to equality before the law in any consolidated federal discrimination law.

28. Actions 30, 38, 51 and 52 should be retained in the Action Plan.

29. The Action Plan should include further measures to remove barriers for disadvantaged people accessing justice for employment issues, including:
    a. the initiation by the Fair Work Ombudsman of more proceedings on behalf of disadvantaged workers particularly in general protection matters;
    b funding a network of employment law services in each State and Territory;
    c extending the current 14 day limitation period for Fair Work Australian complaints in unfair dismissal matters to 60 days.

30. The promotion of economic, social and cultural rights (Action 62) should be included as broader policy aim.

**Aboriginal and Torres Strait Islander peoples**

31. The Action Plan should include a broader framework for addressing the significant disadvantage and human rights violations experienced by Aboriginal and Torres Strait Islander peoples that is negotiated in partnership with Aboriginal and Torres Strait Islander peoples and includes communication and coordination across all programs.

32. All actions to improve the human rights of Aboriginal and Torres Strait Islander peoples must be adequately funded and monitored to ensure that the actions have the greatest impact possible in improving such rights, with the outcomes sought negotiated in partnership with Aboriginal and Torres Strait Islander peoples.

33. The Action Plan should incorporate the rights contained in the UN Declaration on the Rights of Indigenous Peoples across all actions and government programs.

34. The Action Plan should include reforming anti-discrimination law to increase the ability of Aboriginal and Torres Strait Islander peoples to bring discrimination complaints.

35. The Action Plan should include the establishment of statutory reparation schemes for:
    a. individuals who were part of the Stolen Generations; and
    b. communities to compensate for past injustices and build a stronger economic base for the future through, for example, the creation of community trust funds.

36. The Action Plan should include a staged implementation of the recommendations of the Bringing Them Home report.

37. The Action Plan should include a public education and awareness campaign to educate the whole community of the past injustices suffered by Aboriginal and Torres Strait Islander peoples.

38. Action 63 should be retained in the Action Plan.

Recommendations:

39. The Action Plan should include consideration of a consistent approach to land rights across all jurisdictions based on the NSW Aboriginal Land Rights Act 1983, and opportunities for Aboriginal and Torres Strait Islander communities to establish an economic base upon which current and future generations can build wealth and sustainability.

40. Action 66 should be strengthened in line with the Australian NGO CEDAW Action Plan to include:
    a. strategies to increase Aboriginal and Torres Strait Islander women's participation on public and private boards, including targets for board membership and scholarships; and
    b. the introduction of an annual grant round available to NGO and community led programs, funded at 25% of current funding allocated to government led leadership programs for Aboriginal and Torres Strait Islander women.

41. Action 67 regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples should be strengthened to include implementation of the Expert Panel's report by 2014.

42. Action 83 should include more specific strategies – such as funding of diversionary services – and timeframes to address the overrepresentation of Aboriginal and Torres Strait Islander people in prison.

43. The Action Plan should reflect an intersectional identity, in particular with health, housing, work and education actions and targets that reflect Aboriginal and Torres Strait Islander women's experience.

44. Action 87 should be strengthened to include an increase in funding for legal services for Aboriginal and Torres Strait Islander peoples and, in particular, the establishment of specialist, culturally appropriate Aboriginal and Torres Strait Islander women's legal services and funding for a network of such services.

**Women**

45. The Action Plan should include further measures to improve women's participation in political and public life, including targets of 30% for women on private boards, the provision of adequate and affordable childcare for all women who need to access it, and further development of the right to flexible working conditions and support by Government for employees to create flexible positions.
46. All actions in the CEDAW Action Plan should be included in the National Human Rights Action Plan.
47. Actions 112, 113 and 114 should be retained in the Action Plan.
48. The Action Plan should include monitoring and strengthening of existing services and protections for women who have or may be victims of violence.
49. Action 100 should include funding for the implementation of the National Plan to Reduce Violence Against Women and Children, and establishing a funded, independent body to monitor and evaluate the National Plan with input from non-government organisations, such as the Australian Women Against Violence Alliance.
50. The timeframe for Action 105 (National Domestic Violence Order Scheme) should be brought forward to implementation in 2013.
51. Action 106 should be strengthened to include the ALRC 2012 Family Violence and Commonwealth Laws Report and a timeframe for implementing the Government responses to the reports.
52. Action 107 should implement a targeted campaign to significantly improve the rates of reporting of sexual harassment in the workplace within two years.
53. Action 111 should be strengthened to include increased funding for specialist family violence services to respond appropriately to the needs of Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, and lesbians and gender diverse women.
54. Action 117 should be strengthened to include a commitment to implement the recommendations made by the Senate Legal and Constitutional Affairs Committee in its 2008 inquiry on the effectiveness of the Sex Discrimination Act 1984, or to provide reasons for not implementing the recommendations.
55. Action 119 should be strengthened to include a commitment to implement recommendations from the Review into the Treatment of Women in the Australian Defence Force and Defence Force Academy.

56. The Action Plan should include removing the reservation under CEDAW around women in active duties in the armed forces by June 2012.

**Gay, lesbian, bisexual and or gender diverse people**

57. The Action Plan should include amendment of the Marriage Act to allow same sex marriage.
58. Actions 140,143-145 should be retained in the Action Plan:

**People at risk or experiencing homelessness**

59. The Action Plan should identify that State and Territory governments should be required, as a condition of receipt of federal funding, to take legislative action to protect the right to adequate housing and to protect against arbitrary eviction.
60. The Action Plan should address the ongoing funding crisis in emergency (refuge) accommodation.
61. The Action Plan should prioritise the provision of mental health services, especially for people at risk of or experiencing homelessness.
62. There should be greater emphasis in the Action Plan on specific prevention strategies. These strategies should be drawn from The Road Home: Homelessness White Paper.
63. Actions 147 and 148 should be retained in the Action Plan.
64. Action 151 should be strengthened to include enacting legislation to enshrine the right of adequate housing and to protect against discrimination on the basis of homelessness on the ground of social status in federal discrimination law. Such legislation should be introduced in 2012.
65. Action 152 should be strengthened in conjunction with the access to justice priority area to recognise the need to protect economic, social and cultural rights in order to prevent homelessness and poverty.
66. The Action Plan should include requiring public tenancies to be maintained for 6 months when a person is incarcerated. Currently the tenancies in NSW are terminated after 3 months which has the impact of people leaving gaol into homelessness.

**People with disabilities**

67. The Action Plan should include actions to reform anti-discrimination laws relating to people with disabilities, including by adopting NACLC's recommendations.
68. The Action Plan should commit to increased funding to states and territories for education of students with disabilities.
69. The Action Plan should require that any funding agreement between the Commonwealth and states and territories require that funds be spent in line with the United Nations Convention on the Rights of Persons with Disabilities.
70. Actions 154, 160 and 168 should be retained in the Action Plan.

71. The National Disability Insurance Scheme should be implemented as a matter of priority.

72. Action 155 should be strengthened to include:
    a. a commitment to ongoing funding to increase the accessibility of public places and private spaces open to the public, public transport, and goods and services; and
    b. the use of Disability Standards to legislate minimum standards for accessibility.

73. The Action Plan should be amended to ensure that people with disabilities and their employers are supported appropriately so that those who can work are not placed in unsuitable employment or disadvantaged by the new rules.

74. Actions 159,169 and 173 should be retained in the Action Plan, but they should be complemented by the inclusion of an action to enact legislation to enshrine the right to the highest attainable level of healthcare regardless of a person's economic situation.

75. Action 158 should be strengthened to include targets for increasing employment of people with disabilities with the APS, State and Territory public services and at the local government level. It should also be complemented by increasing the funding available for workplace adjustments and training for people with disabilities employment within the APS.

76. Action 170 should be strengthened to include enacting legislation, by 2014, to prohibit non-therapeutic sterilisation of any child unless there is a serious threat to health or life, and of any women in the absence of fully informed and free consent.

77. Action 171 should be strengthened to a commitment to increase funding to community legal centres to provide legal information and help on disability discrimination, and a commitment to fund specialist employment advice services within community legal centres.

**People in prisons**

78. The Action Plan should include actions to realise the right to rehabilitation and education in prison, including law reform to protect this right and strategies to improve access to adequate and appropriate education programs for prisoners.

79. The Action Plan should include actions to realise the right to vote for all prisoners.

80. The Action Plan should include actions to abolish visa cancellation on the basis of the character test.

81. The Action Plan should include funding Aboriginal Legal Services to provide preventative services to those in prison to help with post release.

82. The 'Oversight mechanisms' priority area should include establishing a national prevention mechanism that complies with the requirements under the Optional Protocol to the Convention Against Torture.

83. Action 187 should be strengthened to include increased funding to community legal centres to provide legal help and information to people in custody.

84. The Action Plan should include amending anti-discrimination laws to provide adequate protection from discrimination on the basis of a person's criminal record, in line with NACLC's recommendations.

**Refugees, asylum seekers and migrants**

85. The Action Plan should include ending mandatory indefinite detention of asylum seekers.
86. The Action Plan should include ensuring all asylum seekers can live in the community until their claims are determined.
87. If the policy of mandatory detention of asylum seekers is to be retained, the Action Plan should include the introduction of a maximum period of detention of four weeks for all asylum seekers. The Minister for Immigration should be required to provide cogent, public reasons for why any asylum seeker is detained for longer than four weeks.
88. The Action Plan should include the removal of the waiting period for newly arrived residents from the Social Security Act 1991.
89. Actions 188-190 and 207 should be retained in the Action Plan.
90. Action 193 and 197 should provide for implementation of more rigorous review processes of conditions and time spent in detention, including a trigger for the Ombudsman's review and report to the Minister at an earlier stage in detention.
91. Action 206 should be strengthened by increasing funding to community legal centres to provide legal information and assistance in relation to refugee and immigration matters.
92. The Action Plan should include a broader framework to improve community attitudes and multiculturalism, in addition to the specific actions identified.
93. Action 211 should be strengthened to include a comprehensive examination of how all Australian Government departments and agencies respond to clients of CALD backgrounds, and be extended to State and Territory Government departments and agencies.

## INTRODUCTION

Kingsford Legal Centre (KLC) welcomes the opportunity to make this submission to the Attorney-General's Department about its Exposure Draft of Australia's National Human Rights Action Plan. KLC endorses the National Association of Community Legal Centres (NACLC) submission on the Exposure Draft of Australia's National Human Rights Action Plan.

### About Kingsford Legal Centre

KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government Areas since 1981. KLC provides general advice on a wide range of legal issues and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer. In 2011 KLC provided 1818 legal advices and opened 388 new cases. KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved. Staff members from across all of our services have contributed to the writing of this submission.

KLC is also involved in monitoring Australia's compliance with its human rights obligations and working with other organisations to provide shadow reports to United Nations Committees on the attainment of human rights in Australia. We do this through identifying areas where our clients have experienced human rights breaches and monitoring the operation of laws and policies in Australia. Since 2006 KLC has jointly co-ordinated numerous NGO reports on UN treaty body monitoring including the following NGO treaty monitoring reports:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of Discrimination Against Women (CEDAW )

It has also jointly coordinated the NGO Report for Australia's UN Universal Periodic Review (UPR).

## Overarching comments on the Exposure Draft

KLC supports many of the specific priorities in the Action Plan, but is concerned that the Action provides no wider policy goals. We are concerned that presently the priorities outlined in the Action Plan are simply the listing of specific projects, rather than broader Commonwealth strategies to achieve human rights. We believe that the Action Plan must include wider national policy goals, as well as specific projects. We therefore provide specific comments on some priorities but also reiterate the need for these to be accompanied by wider priorities that address human rights on a systemic level.

KLC notes that the lead agency identified in many of the actions is either the Commonwealth through one of its agencies or departments OR the Victorian Government. This leads to an unbalanced Plan which seems to focus on one of the States rather than applying to *all* States and Territories. It is unclear whether the other States and Territories will also provide clear data about their actions under the plan in a later version, or whether the Plan will only focus on Victoria and the Commonwealth. It would be preferable for it to include actions of all State and Territory governments.

Furthermore, we are concerned that any action plan should have measurable, identified performance indicators with clear time lines. The timelines are frequently 'ongoing', which then makes it very difficult to measure whether or not a specific outcome has been achieved. We submit it would be preferable to break down the indicators further so that specific actions and outcomes can be measured over a period of years. The approach identified in the NACLC submission, which separates indicators into structural, process and outcome indicators, is valuable for ensuring that outcomes can be measured clearly.

KLC is concerned that some of the feedback that was given in response to the Draft Baseline Study has not been sufficiently incorporated into the Baseline Study or Draft Action plan. We detail our concerns below.

In our comments below we have focused on actions and priority areas that are most relevant to our clients and areas of expertise.

## PROTECTION AND PROMOTION OF HUMAN RIGHTS IN AUSTRALIA

### Additional priorities and actions that should be included in the Action Plan

#### *Engagement with NGOs*

We commend the Government's positive engagement with the UN human rights system. As we stated in our initial submission to the Baseline study, KLC recognises the positive steps the Australian Government is taking in its engagement with the UN human rights system. The Australian Government actively and constructively engages with civil society and with UN bodies over human rights issues. For example, there were numerous roundtable discussions conducted between the Attorney General's Department and NGO representatives and the Australian Human Rights Commission (AHRC), both before and after the review of Australia under the Universal Periodic Review. This constructive approach enables full and frank discussion of human rights issues between government and other stakeholders.

However while there is constructive engagement with civil society and with the UN human rights system, this work is split across a range of government departments. These include the Attorney General's Department, the Office for Women and the Department of Foreign Affairs and Trade. This proves to be problematic as each takes a substantively different approach. KLC's preferred model would be an adaption of the one used by the Office for Women in Australia's 2010 review under CEDAW where there was funding available to enable thorough consultation and development of NGO report. There was also constructive engagement with NGOs and active consultation between other Government departments and the Office for Women. This effectively progresses the development of policy around women's equality in Australia.

*Recommendation:*

1. *The Action Plan should include the development of a uniform approach for Australian Government dealings with NGOs and treaty monitoring bodies, which includes a uniform, funded and constructive relationship between NGOs and government departments for UN reporting processes. Measurement of this could be through:*
    a. *initial discussions and consultations between the 3 departments by June 2012;*
    b. *transferral of resources to enable one of the reporting departments to be responsible for reporting by Dec 2012 ; and*
    c. *training of personnel in the model used at the Office for Women by December 2012.*

### *Human Rights Act*

While KLC commends the Government for introducing a Human Rights Framework (see our comments on this below), we are disappointed that a statutory Human Rights Act is not a part of the Human Rights Action plan. We refer to our submission to the Baseline study, which we have extracted below:

> Despite Australia's long engagement with the United Nations and the ratification of key international instruments protecting human rights, Australia falls short in the domestic enactment of these protections. This remains a long standing concern of KLC and is an issue that was identified strongly by the Australian community in the National Human Rights Consultation (**the Consultation**).[1] While we commend the Government for its commitment to a National Human Rights Action Plan we also must comment that this remains insufficient to adequately protect human rights in Australia. Australia's protection of human rights will remain limited without adequate Constitutional protection and domestic enactment of the international human rights Australia has recognised through ratification of international instruments. In the absence of this protection, a statutory *Human Rights Act* is the only other option that would adequately protect human rights in Australia and allow for their enforcement where a person has experienced a breach of those rights. The overwhelming response by the Australian community to the National Human Rights Consultation revealed the importance the Australian community places on the protection of human rights, and in particular the need for domestic legal protection.
>
> In this context it is important to note the limited nature of current Constitutional protection of human rights as outlined in the draft Baseline Study [2] – these rights are not comprehensive and do not reflect Australia's international obligations. They are also not readily accessible and do not provide comprehensive human rights protection. It is not desirable that presently only some rights are reflected in the Constitution. For example, we are concerned by an interpretation of the Constitution which allowed the enactment of law and regulations in the Northern Territory with racially discriminatory effect during the 'Northern Territory Intervention'.
>
> Furthermore, the development of implied rights through interpretation by the High Court has added to the patchwork nature of Australia's human rights protections. As highlighted by submissions to the Consultation these rights are limited and have been narrowly interpreted by

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1 National Human Rights Consultation Report September 2009 Commonwealth of Australia p103

2 National Human Rights Action Plan Baseline Study June 2011 at 1.2.1

the Court. These rights also do not give individuals an independent cause of action.[3] This remains insufficient and inadequate in our view to adequately protect human rights in Australia.

As has been well documented the common law does not adequately protect human rights and can be subject to legislation which is incompatible with human rights principles. [4]

While Victoria and the Australian Capital Territory have developed state-based statutory charters of rights, this has not provided any added human rights protection for people living outside those states. As human rights are universal it is not desirable that such differing protection currently exists based on geographic location. For this reason human rights protection must be approached as a national issue for the federal Government to address.

*Recommendation:*

2. *The Action Plan should include the enactment of a statutory Human Rights Act by June 2013.*

## Support for priorities and actions included in the Draft Action Plan

KLC supports:

- Action 6 to establish and maintain a publicly accessible database of UN human rights treaty body recommendations. This is a useful and helpful resource for non-governmental organisations.
- Action 7 to continue to adhere to the provisions of the *Extradition Act 1988* preventing the extradition of those who may face the death penalty. In KLC's experience this is an important protection for those who may otherwise be extradited.
- Action 11 to continue to provide ongoing funding support to the Office of the High Commissioner for Human Rights.
- Action 19 to continue to monitor the Victorian *Equal Opportunity Act*.

*Recommendation:*

3. *Actions 6, 7, 11 and 19 should be retained in the Action Plan.*

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[3] National Human Rights Consultation Report at note 1 p113

[4] National Human Rights Consultation Report at note p122, cited the case of *Al-Kateb v Godwin* (2004) 219 CLR 562.

## Improvements to priorities and actions included in the Draft Action Plan

### *Improving data collection*

The advisory group established under Action 1 should include some community representation. Recommendations from the CEDAW Committee[5] included the need for disaggregated data. This should also have additional performance indicators which give greater detail to this priority.

*Recommendation:*

4. *The advisory group established under Action 1 should include community representation. Any additional data collected should also be disaggregated.*

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

***Action 2***: KLC commends the Government for taking steps to ratify the Optional Protocol to the Convention Against Torture. We submit that additional time lines should be included to ensure that the Protocol is ratified by December 2012.

***Action 3***: KLC commends the Government for including a review of its reservations under the ICCPR, CEDAW, the Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CROC), the Optional Protocol to the Convention on the Rights of the Child: Children in Armed Conflict, and the Convention on the Rights of Persons with Disabilities (CRPD).

We believe that the Government through its actions in some areas, such as changing the policy around women in active duties in the armed forces and the introduction of paid maternity leave, is well placed to lift its reservations under CEDAW.

***Action 5***: KLC commends the Government for reviewing its position on International Labour Organization (ILO) Convention 169. This is a key international convention for the advancement and protection of human rights of Indigenous people while there is no international convention on the rights of Indigenous peoples.

However we submit that the consideration of ILO 169 by State and Territory Workplace Ministers in 2012 is not sufficiently strong.

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[5] CEDAW Committee Concluding Observations on Australia, 2006 and 2010.

We recommend that Australia sign and ratify ILO 169 with this process beginning with the consultation with the Workplace Ministers. We recommend that Australia commit to signing ILO 169 by December 2013.

***Action 8***: KLC commends the Australian Government for its commitment to increase aid to 0.5% of Gross National Income. While this is an admirable first step we believe it does not fit with Australia's international obligations. We submit that Australia should aim to contribute 0.7% of GNP to development. This would be in line with international agreements including at the March 2002 International Conference on Financing for Development in Monterrey and at the World Summit on Sustainable Development held in Johannesburg.

By committing to a 0.7% of GNP, Australia would uphold its part of enabling the achievement of the Millennium Development Goals.

We recommend that Australia increase its aid and development commitment to 0.7% of GNP by 2018.

***Action 9***: KLC supports the work of the Australian Government and the Australian Human Rights Commission, the Asia Pacific Forum to promote human rights in the region. However we believe that this priority would benefit from some more measurable indicators. We recommend that some specific goals be set in order to be able to measure whether or not human rights are being achieved within the region. These goals could be set by the Pacific Islands Forum in consultation with the other collaborators. We recommend a 5-10 year plan for improving human rights within the region.

***Action 10***: KLC commends the Australian Government for promoting human rights within its official aid programs. However in order to make sure that this has meaning rather than only superficial benefit this priority would benefit from greater detail and measurable indicators. We recommend that each of the country and regional aid programs incorporate human rights within their aims and cross sectionally, rather than within only the law and justice sections of their programs. We recommend that for example health and education programs would also benefit from a human rights perspective and measurable outcomes. This may require a refocussing and training of aid workers within AusAid.

***Action 12***: KLC commends the Australian Government for working to build the capacity of the Association of Southeast Asian Nations (ASEAN). We recommend that monitoring and

evaluation of the support be implemented to ensure that the best approaches are used in this work.

***Action 13***: KLC commends the implementation of the Disability For All strategy within the aid program. We believe that gender is not sufficiently integrated across all aid programs of AusAid and recommend a more rigorous, monitored gender approach throughout all aid programs.

***Action 15***: KLC commends the Australian Government for its commitment to provide funding to ensure participation of people with disabilities and representatives to participate in key international forums.

In our experience advocating in international fora, a multi skilled, representative delegation with a range of backgrounds adds depth and quality to NGO advocacy to UN treaty bodies and other bodies. This was particularly the case with the most recent review of Australia by the CEDAW Committee in 2010. To enable this, we recommend that funding for NGO participation in advocacy at UN bodies include a component for diverse groups. The diversity should include representation of people from Aboriginal and Torres Strait Islander backgrounds, from culturally and linguistically diverse backgrounds, and of different sexual orientations, gender identities and gender, as well as people with disabilties.

***Action 16***: KLC commends the funding of Aboriginal and Torres Strait Islander peoples in key international fora on human rights. However we do not believe that the Australian Human Rights Commission is the most appropriate organisation to be allocated funding. We recommend that funding be provided to other Aboriginal and Torres Strait Islander organisations, rather than the Australian Human Rights Commission, for allocation.

*Recommendations:*

5. *The timeframe for Action 2 should include lodging the instrument of ratification of OP CAT with the UN by December 2012 and developing model legislation by December 2012.*
6. *There should be a clearer timeline attached to the review of reservations in Action 3. In addition to placing it on the agenda of the Standing Council of Treaties, the Australian Attorney General's Department should outline how each reservation could be lifted and develop a time line for the removal of each.*
7. *The reservations under CEDAW should be removed by June 2012 (Action 3).*
8. *Action 5 should be strengthened to provide that Australia will sign and ratify ILO 169 by December 2013 with this process beginning with consultation with Workplace Ministers.*

9. *Australia should increase its aid and development commitment to 0.7% of GNP by 2018 (Action 8).*
10. *Action 9 should include specific, measurable goals with a 5-10 year time frame in order to measure how human rights are being promoted and achieved within the region.*
11. *Action 10 should include a human rights analysis and measurable goals for each regional program and cross sectional program, and training for AusAid personnel to enable them to successfully incorporate human rights within their development programs and funding.*
12. *Action 12 should include monitoring and evaluation of the Australia's work with ASEAN to be implemented over a 5 year period to ensure that the best approaches are used in this work.*
13. *AusAid should implement a more rigorous, monitored gender focussed approach throughout all of Australia's aid programs.*
14. *Funding for NGO participation in advocacy at UN bodies should include a component for diverse groups, including representation of people from Aboriginal and Torres Strait Islander backgrounds, from culturally and linguistically diverse backgrounds, and of different sexual orientations, gender identities and gender, as well as people with disabilities (Action 15).*
15. *For each review of Australia by a UN body, funding should be provided to the NGO sector or coalition of NGOs to advocate within these arena. A target of at least 8 delegates from diverse backgrounds over a 5 year period should be funded.*
16. *Funding for Aboriginal and Torres Strait Islander representation in international human rights fora should be provided to Aboriginal and Torres Strait Islander organisations, rather than the Australian Human Rights Commission, for allocation.*

### *Legal protections*

***Actions 17 and 18***: KLC commends the ongoing funding of the AHRC to resolve complaints of discrimination. We submit that this individual complaint model is insufficient to deal with the multiple issues faced by disadvantaged clients when trying to exercise their rights through anti-discrimination law. While the AHRC is an important human rights institution there are limitations on the extent to which it has been able to address systemic disadvantage in Australia. The NACLC submission on the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper outlines some of those limitations in further detail, in particular the limitations

of the AHRC in addressing issues of systemic human rights abuse.[6] While the AHRC has important inquiry powers, it has limited power to implement recommendations. For example, the '*Bringing Them Home Report*'[7] recommendations have still not been fully implemented, despite numerous recommendations from UN treaty bodies that they should be implemented.[8]

There are also significant current deficiencies in Australia's discrimination laws, with significant areas of life remaining unprotected from unlawful discrimination. The current deficiencies were highlighted in the NACLC submission on the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper. That submission outlines that as well as not protecting significant areas of public life, current federal law does not provide an effective complaints process and prohibits many people from accessing justice when they have experienced discrimination.

We welcome the Government's commitment to strengthening current discrimination protection and see this as essential in relation to strengthening human rights protection in Australia. This commitment should also be reflected in the Action Plan.

**Action 20**: KLC commends the strategy to increase understanding of prejudice motivated crime. We are concerned that only Victoria is implementing this type of strategy. We recommend that each State and Territory should adopt and implement a similar strategy.

*Recommendations:*

17. *Action 18 should reflect the Australian Government's commitment to strengthen Commonwealth anti-discrimination law. Further, NACLC's recommendations regarding anti-discrimination law should be adopted within the Human Rights Action Plan.*
18. *Action 20 should be broadened to provide that a strategy to increase understanding of prejudice motivated crime be adopted and implemented by each State and Territory .*

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[6] NACLC Submission to the Australian Attorney-General's Department's responding to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011), 1 February 2012, pp 22-23. KLC contributed to this submission.

[7] National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, AHRC known as the "Bringing Them Home Report".

[8] Concluding Observations ICESCR 2009 , Concluding Observations ICCPR 2009, Universal Periodic Review, 2011 Recommendation 97.

### *Australia's human rights framework*

***Action 21***: KLC commends the creation of a Human Rights Framework and its inclusion in a Human Rights Action Plan. We believe that incorporating human rights concepts and education into primary and secondary school curricula is vital for educating the community about human rights. Civics education that includes human rights will make these concepts more commonplace and their compliance more likely.

We submit that there need to be clear timelines and indicators attached to this priority in order to ensure that the appropriate action is taken. Funding human rights education projects is not sufficient. Evaluation and monitoring of these projects should be included in the indicators of success to ensure that the best education projects can be replicated. We submit that the inclusion of human rights into school curricula needs to be broken down into smaller, measurable outcomes in order to allocate time frames and to ensure that these outcomes are met.

We further commend the funding of the AHRC for its community education role on human rights. We submit that this work should also be monitored and evaluated with key learnings being integrated to improve its work. This should be done on a two yearly basis.

***Action 22***: We welcome the creation of a Parliamentary Joint Committee on Human Rights which will review all Bills and has the power to review existing Acts. As stated under Priority 21, we are disappointed that there is no national statutory Human Rights Act. We recommend that the effectiveness of this Committee be reviewed in 2014 in order to ensure it is working as effectively as possible.

***Action 23***: KLC commends the Government for considering recognition of human rights in any revision of the Australian Public Service values. We submit that human rights should be included in the Australian Public Service values and that this should occur by the end of 2014 with proper training given to public servants about the meaning of the changes.

***Action 24***: KLC commends the Government for reviewing legislation, policies and practices for compliance with the seven core human rights treaties. We submit that the recommendations from each of the recent reviews of Australia would be the most appropriate place to start in this review. The recommendations which arose out of the Universal Periodic Review would enable a thorough review of the most outstanding compliance issues. We recommend that the Government should complete this review by 2015.

***Action 25***: KLC commends the review of the Charter of Human Rights and Responsibilities by the Victorian Government. We recommend, as supported by numerous submissions to the original consultation, the inclusion of economic, social and cultural rights in the Charter. These are some of the most significant issues which face our clients . Human rights are indivisible and having a Charter which includes all human rights recognises the reality of clients.

We are also concerned that only the ACT and Victoria have a State or Territory Charter of Rights. We recommend that the Australian Government commence discussions and consultations with each State and Territory with the aim of enacting a State or Territory Charter of Rights in each State or Territory. This should begin immediately with the aim of a Charter being enacted in each State or territory by 2015.

*Recommendations:*

*19. Action 21 regarding human rights education should be strengthened to include:*

- *a. clear timelines and indicators to ensure appropriate action is taken;*
- *b monitoring and evaluation of community education projects to assess whether they are effective in educating the community about human rights;*
- *c. smaller, measurable outcomes, with timeframes, in the education curricula to ensure that these outcomes are met;*
- *d. initial discussions with each State and Territory by December 2012, with curricula for primary and secondary education changed to incorporate human rights education by June 2014; and*
- *e. monitoring and evaluation of the AHRC's community education work on a two yearly basis.*

*20. The effectiveness of the Parliamentary Joint Committee on Human Rights should be reviewed in 2014 in order to ensure it is working as effectively as possible (Action 22).*

*21. Human rights should be included in the Australian Public Service values and by the end of 2014 with proper training given to public servants about the meaning of the changes (Action 23).*

*22. The review of legislation, policies and practices referred to in Action 24 should begin with the recommendations that UN treaty monitoring committees have made in the last seven years and the recommendations arising out of the Universal Periodic Review. This review should be completed by 2015.*

23. *The review of the Victorian Charter of Human Rights and Responsibilities should include the addition of protections for economic, social and cultural rights (Action 25).*
24. *The Australian Government should commence discussions and consultations with each State and Territory with the aim of enacting a State or Territory Charter of Rights in each State or Territory.*

## ACCESS TO JUSTICE

### Additional priorities and actions that should be included in the Action Plan

#### *Need for priorities, policy goals and role of access to justice in attaining human rights*

As outlined above, KLC supports many of the specific priorities in the Action Plan, but is concerned that the Action Plan provides no wider policy goals. We are particularly concerned about the absence of a Commonwealth strategy around access to justice. The danger with this approach is that it fails to identify larger underlying barriers to access to justice. We believe that the Action Plan must include wider national policy goals, as well as specific projects. We therefore provide specific comments on some priorities but also reiterate the need for these to be accompanied by wider priorities that address systemic access to justice policies.

KLC strongly asserts the importance of ensuring access to justice in the attainment of human rights standards. We believe the National Action Plan should have a greater focus on the connections between access to justice and the attainment of human rights. The Action Plan does not clearly outline that for rights to be realised there often must be a functioning and accessible justice system. We believe this goal should be clearly outlined in the Action Plan as well as specific access to justice projects.

We believe that the Action Plan should have a focus on addressing systemic access to justice issues at both a Commonwealth and State and Territory level. While many of the specific projects documented as priorities are commendable these do not represent a systemic policy approach to access to justice nationally. We are particularly concerned that the Action Plan does not address key issues across the States and Territories and has a particular focus on Victoria. This further suggests a piecemeal approach to access to justice issues and suggests that the plan in part simply coalesces and documents current projects, rather than developing a national strategy around these issues.

KLC recommends that the Action Plan should include some overarching priorities required to further access to justice nationally. These priorities should be reflected in specific projects across all States and Territories.

Specifically, the important role of civil law advice in the attainment of human rights needs to be recognised**.** As outlined in the Senate Committee Report,[9] access to civil law advice is also extremely limited and is a severe restriction to access to justice. Many human rights abuses are civil law matters and without adequate funding of civil law services any rights that individuals have are meaningless. In particular, a lack of access to civil law services can impact disproportionately on disadvantaged people and can result in further breaches of human rights. For example, without access to advice about housing law, a person may easily become homeless. In order to improve the protection of human rights in Australia there must be increased access to publically funded civil law advice and representation, especially for people who are experiencing disadvantage. KLC strongly supports increased funding in particular for Aboriginal Legal Services, which are generally not able to provide civil law services. In their research on the family and civil law needs of Aboriginal people in NSW, Chris Cunneen and Melanie Schwartz identify that civil problems often become criminal problems in Aboriginal communities. As such, civil legal help is crucial to addressing all legal needs to Aboriginal communities.[10]

We believe that the Action Plan would benefit from a greater systemic focus on the connections between poverty, access to justice and the attainment of human rights and that the Australian Government should identify this as a key issue to address in conjunction with State and Territory Governments.

*Recommendations:*

*25. The Action Plan should include overarching priorities required to further access to justice nationally.*

*26. The Action Plan should include and prioritise a systemic focus on the connections between poverty, access to justice and the attainment of human rights.*

### *Overarching recommendations access to justice*

The Action Plan should also include a number of key overarching recommendations aimed at achieving access to justice:

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[9] Senate Committe Report Access to Justice at 20, pp 50 -54.

[10] Chirs Cunneen & Melanie Schwartz, *The family and civil law needs of Aboriginal people in New South Wales*, 2008.

- The Australian Government should undertake a legal needs analysis nationally in order to inform access to justice strategies. The legal needs analysis should particularly examine the role of legal services in ensuring the attainment of minimum standards of living in areas such as health, housing and education and examine the relationships between access to justice and the prevention of poverty, homelessness and ill health.

- The Australian Government should increase funding to Community Legal Centres , Legal Aid and Aboriginal Legal Services in order to meet current legal need, especially for disadvantaged people. There should be a particular emphasis on the funding of civil law services.

- The Australian Government should take an active role in the regulation of legal costs through the national regulation of the profession, including instituting a move away from hour based billing toward work based billing.

- The Australian Government should reinstitute fee waiver provisions in all federal courts and tribunals for people on low incomes or experiencing financial hardship, particularly in migration review matters at the Migration Review Tribunal and in visa cancellation matters at the Administrative Appeals Tribunal. The Australian Government should legislate to ensure no applications to federal courts and tribunals are deemed out of time or refused simply on the failure to provide the application fee at the time of filing.

- The Australian Government should develop a specialist division of the Federal Court and the Federal Magistrates Court for discrimination law matters. The Government should also ensure that procedures in these divisions are simplified to allow self-represented litigants to conduct their cases more effectively.

- The Australian Government should move to make federal discrimination law a costs free jurisdiction as recommended in the NACLC submission on the Consolidation of Discrimination Law. The Government should also accept recommendations outlined in that submission regarding increasing access to the courts for representative complaints.

- The Australian Government should enshrine a right to equality before the law in any consolidated federal discrimination law.

*Recommendations:*

*27. The Action Plan should include overarching recommendations aimed at achieving access to justice, specifically actions should be included to:*

*a. undertake a national legal needs analysis;*
*b. increase funding to Community Legal Centres, Legal Aid and Aboriginal Legal Services;*
*c. regulate legal costs through national regulation of the profession;*
*d. allow for fee waiver provisions in all applications to federal courts and tribunals for people on low incomes or experiencing hardship;*
*e. accept all applications to federal courts and tribunals as in time, without the payment of the appropriate fee;*
*f. develop a specialist division of the Federal Court and Federal Magistrates Court for discrimination law matters;*
*g. make federal discrimination law a costs free jurisdiction and implement other measures to increase access to the Courts for representative complaints; and*
*h. enshrine a right to equality before the law in any consolidated federal discrimination law.*

## Support for priorities and actions included in the Draft Action Plan

KLC supports the inclusion of Action 30 to fund family law clinical legal education programs. KLC has been running a family law clinical legal education program since 2010. In our experience, the clinic has been successful in developing students' awareness of social justice and equity issues, such as the nature and impact of domestic violence and the barriers in accessing justice for clients from culturally and linguistically diverse backgrounds. KLC supports family law clinical legal education programs continuing and being extended.

KLC supports the inclusion of Action 38 and recommends that the Commonwealth should also act to ensure State and Territory governments have effective and transparent police accountability mechanisms.

KLC supports Actions 51 and 52 in relation to *Fair Work Act* contraventions.

*Recommendation:*

*28. Actions 30, 38, 51 and 52 should be retained in the Action Plan.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Employment issues*

In addition to Actions 51 and 52 in relation to *Fair Work Act* contraventions, KLC also recommends that Fair Work Ombudsman also initiates more proceedings on behalf of disadvantaged workers, particularly in general protection matters. KLC also recommends that the Government should also examine the extent to which access to Fair Work Australia is inhibited by a lack of free employment law services, and should also move to a 60 day limitation date for complaints in unfair dismissal matters with Fair Work Australia in order to be consistent with the limitation date for general protections. See Kingsford Legal Centre's submission to the Review of the *Fair Work Act 2006* (February 2012) for further detail on this recommendation and other alternatives.

### *Promotion of economic, social and cultural rights as a key policy aim*

KLC supports the inclusion of Action 62 in relation to the promotion of economic, social and cultural rights but believes this should be a key focus of the Action Plan and that this should be better identified as a key policy aim. See our earlier recommendations in relation to overarching policy concerns. We believe that the Action Plan should have a greater emphasis on the links between poverty and access to justice, and in particular the role of economic, social and cultural rights in preventing poverty.

*Recommendations:*

*29. The Action Plan should include further measures to remove barriers for disadvantaged people accessing justice for employment issues, including:*

- *a. the initiation by the Fair Work Ombudsman of more proceedings on behalf of disadvantaged workers particularly in general protection matters;*
- *b funding a network of employment law services in each State and Territory;*
- *c extending the current 14 day limitation period for Fair Work Australian complaints in unfair dismissal matters to 60 days.*

*30. The promotion of economic, social and cultural rights (Action 62) should be included as broader policy aim.*

## Additional priorities and actions that should be included in the Action Plan

### *Coordination and communication across priorities and actions*

The Action Plan lacks a coherent and overarching framework to address the significant disadvantage and human rights violations experienced by Aboriginal and Torres Strait Islander peoples. It is essential that the individual priorities and actions operate within a broader framework that is negotiated in partnership with Aboriginal and Torres Strait Islander peoples and includes communication and coordination across all programs.

### *Adequate funding and monitoring of all actions in partnership with Aboriginal and Torres Strait Islander peoples*

All actions to improve the human rights of Aboriginal and Torres Strait Islander peoples must be adequately funded and monitored to ensure that the actions have the greatest impact possible in improving such rights. Further, the outcomes sought must be negotiated in partnership with Aboriginal and Torres Strait Islander peoples. If, during the implementation of specific actions, problems occur, then additional resources need to be made available in a timely manner to ensure the overall strategy to improve the human rights of Aboriginal and Torres Strait Islander peoples remains on track. There have been many plans made over the past few decades relating to Aboriginal and Torres Strait Islander peoples but many of these have failed to produce significant results due to a lack of a real partnership approach and adequate resources.

### *Reference to and incorporation of the UN Declaration on the Rights of Indigenous Peoples*

Articles from the UN Declaration on the Rights of Indigenous Peoples should be included throughout a range of actions and government programs, such as the Social Inclusion Agenda (Action 62), to ensure that the rights of Aboriginal and Torres Strait Islander peoples are adequately protected and implemented. In particular, Articles 2 and 5 should inform the development of the Action Plan and all actions in it:

> Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

> Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

### *Equality, anti-discrimination laws and a reparations scheme*

The Action Plan should include reforming anti-discrimination laws to increase the ability of Aboriginal and Torres Strait Islander peoples to bring discrimination complaints. It should also establish a reparations scheme to compensate Aboriginal and Torres Strait Islander peoples for the suffering of past injustices and breaches of human rights. Many Aboriginal and Torres Strait Islander communities are living in poverty and do not have any wealth, or asset base upon which the communities can build a better future for younger people and future generations.

KLC notes that Action 80 refers to a healing foundation that will provide services to address trauma in Aboriginal and Torres Strait Islander communities, with a strong focus on the needs of people who were forcibly removed from their family. While this is an important service it does not address the need for compensation.

KLC raised these issues in our submission on the draft Baseline Study. We have extracted our comments from that submission as they remain relevant to the development of the Action Plan:

> Aboriginal and Torres Strait Islander (ATSI) people remain the most disadvantaged group in relation to human rights abuses, and in particular human rights abuses by Government. The need for comprehensive Constitutional protection of human rights in Australia is highlighted by the failure of current human rights processes and protections to address the systemic human rights abuses experienced by ATSI people. In particular, there has been a failure of discrimination law to address systemic disadvantage.
>
> The *Racial Discrimination Act* (RDA) 1975 has not been effective in reducing the incidence of human rights breaches against ATSI people. The suspension of the operation of the RDA in relation to the Northern Territory Intervention also highlighted that the statutory protection of human rights through discrimination legislation is not adequate. For Australia to meet its international human rights obligations these fundamental protections cannot be subject to removal by the Government.
>
> Discrimination laws in Australia make it extremely difficult to prove that a person has been unfairly treated because of their race. Our discrimination laws place an unnecessary burden on the individual complainant. There have been limited examples of ATSI people effectively using discrimination law to redress discrimination. As outlined in the NACLC submissions on the

Consolidation of Discrimination Law[11], the current law is particularly difficult for Indigenous people to access. As also outlined by those submissions, Indigenous people (in particular women) are likely to experience discrimination on more than one "ground" or "characteristic". The failure of discrimination law to adequately recognise this through an intersectional understanding of discrimination has impacted most on Indigenous people. Discrimination law has also failed to encompass a readily accessible legal test and retains a comparator test that often reinforces a white male as the "norm". Our comments in relation to women later in this document should also be read in reference to this section.

The difficulties with bringing an individual discrimination complaint for Indigenous people, as well as the significant human rights abuses experienced by Indigenous people, also highlights the need for strong human rights institutions that are able to deal with systemic issues. As outlined earlier with respect to the '*Bringing them Home Report'* the AHRC has lacked power to ensure that its recommendations are implemented. In accordance with the recommendations of the ICESCR and UPR we submit that proper recognition of the harms experienced by the 'stolen generations' is key to full enjoyment of human rights of Indigenous peoples. Any Human Rights Action Plan should include all those recommendations from the '*Bringing Them Home report* 'which have not yet been fully implemented. The establishment of a scheme for adequate reparation including compensation should be a priority[12].

Likewise, as outlined in the NACLC submissions on the Consolidation of Discrimination Law, current provisions do not adequately allow for the AHRC, through Commissioners and representative complaints to bring matters of discrimination affecting groups.

### *Education and communication of broader community*

The Action Plan should include a public education and awareness campaign to educate the whole community of the past injustices suffered by Aboriginal and Torres Strait Islander peoples, such as the *Aboriginal Protection Act*, Stolen Generations, dispossession of land, and the prohibition of practising culture and using language. It is important that the general public understands the past injustices in order to appreciate the need for affirmative action strategies

[11] NACLC Submissions to the Commonwelth Attorney-General at note 6.

[12] We note that in response to Recommendation 97 of the UPR, the Australian Government rejected the call to implement the Bringing Them Home recommendations, including the recommendation that compensation be paid. The Government stated : *"In February 2008, the Australian Government offered the National Apology in recognition of the grief and suffering inflicted on Stolen Generations. The Australian Government will continue to work in partnership to address the immediate and practical needs of the Stolen Generations. Some States have introduced compensation schemes for children abused in state care or removed from their families."*

to address such injustices. A campaign would also assist in improving relationships between Aboriginal and Torres Strait Islander peoples and the broader community.

Reconciliation Australia conducted the Australian Reconciliation Barometer in 2008, which compared 'the attitudes of Indigenous People and Australians overall'. Some of the findings included:

- 'Indigenous people have a high level of trust for other Australians' – (National sample – 8%, Indigenous sample – 11%);
- 'Other Australians have a high level of trust for Indigenous people' – (National sample – 12%, Indigenous sample – 5%);
- 'It is important that all Australians know about Indigenous culture' – (National sample – 86%, Indigenous sample – 100%);
- 'I think it is important that all Australians know the history of Indigenous people in Australia' – (National sample – 84%, Indigenous sample – 99%);
- 'Indigenous culture is important to Australia's identity as a nation' – (National sample – 70%, Indigenous sample – 99%);
- 'Indigenous people are open to sharing their culture with other Australians' – (National sample – 44%, Indigenous sample – 89%);
- 'I know what I can do to help disadvantaged Indigenous people' – (National sample – 20%, Indigenous sample - 82%).

*Recommendations:*

31. *The Action Plan should include a broader framework for addressing the significant disadvantage and human rights violations experienced by Aboriginal and Torres Strait Islander peoples that is negotiated in partnership with Aboriginal and Torres Strait Islander peoples and includes communication and coordination across all programs.*
32. *All actions to improve the human rights of Aboriginal and Torres Strait Islander peoples must be adequately funded and monitored to ensure that the actions have the greatest impact possible in improving such rights, with the outcomes sought negotiated in partnership with Aboriginal and Torres Strait Islander peoples.*
33. *The Action Plan should incorporate the rights contained in the UN Declaration on the Rights of Indigenous Peoples across all actions and government programs.*
34. *The Action Plan should include reforming anti-discrimination law to increase the ability of Aboriginal and Torres Strait Islander peoples to bring discrimination complaints.*

*35. The Action Plan should include the establishment of statutory reparation schemes for:*

*a. individuals who were part of the Stolen Generations; and*

*b. communities to compensate for past injustices and build a stronger economic base for the future through, for example, the creation of community trust funds.*

*36. The Action Plan should include a staged implementation of the recommendations of the Bringing Them Home report.*

*37. The Action Plan should include a public education and awareness campaign to educate the whole community of the past injustices suffered by Aboriginal and Torres Strait Islander peoples.*

## Support for priorities and actions included in the Draft Action Plan

KLC supports Action 63, which commits the Australian Government to work with the National Congress of Australia's First Peoples. The framework for engagement should ensure that the Congress is independent from Government and include structures to ensure representation of the views of all Aboriginal and Torres Strait Islander peoples.

*Recommendation:*

*38. Action 63 should be retained in the Action Plan.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Land rights*

While KLC supports Action 64 to strengthen native title arrangements, we note that native title is not as strong as freehold title. Consideration should be given to developing a consistent approach across all jurisdictions based on the NSW *Aboriginal Land Rights Act 1983*, and providing opportunities for Aboriginal and Torres Strait Islander communities to establish an economic base upon which current and future generations can build wealth and sustainability. Native title is also very difficult to prove and requires a lengthy legal process. We submit that the needs of communities who cannot demonstrate native title should be included in the Action plan, specifically access to housing, employment and health services.

### *Aboriginal and Torres Strait Islander women's participation in public life*

KLC supports the commitment in Action 66 to continue to support specific initiatives to empower Aboriginal and Torres Strait Islander women. This action should be strengthened in line with the Australian NGO CEDAW Action Plan to include:

- strategies to increase Aboriginal and Torres Strait Islander women's participation on public and private boards, including targets for board membership and scholarships; and
- the introduction of an annual grant round available to NGO and community led programs, funded at 25% of current funding allocated to government led leadership programs for Aboriginal and Torres Strait Islander women.

### *Constitutional recognition*

Action 67 regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples should be strengthened to include implementation of the Expert Panel's report by 2014.

### *Health, housing, work and education priority area and diversity within Aboriginal and Torres Strait Islander communities*

As we stated in our submission on the draft Baseline Study, KLC believes that initiatives to address health, housing, work and education are fundamental to the achievement of equality for Aboriginal and Torres Strait Islander peoples in Australia. However, we remain concerned about the lack of adequate recognition of the diversity of experience within Aboriginal and Torres Strait Islander communities. Aboriginal and Torres Strait Islander women's concerns are not properly reflected within the Action Plan. The Action Plan should reflect an intersectional identity, which means including actions and targets that reflect Aboriginal and Torres Strait Islander women's experience.

### *Overrepresentation of Aboriginal and Torres Strait Islander people in prison*

KLC supports Action 83 that commits the Australian Government to working with the States and Territories and Aboriginal and Torres Strait Islander people to address the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. However, we are concerned that there are not more specific strategies to reduce the overrepresentation of Aboriginal and Torres Strait Islander people who are incarcerated, such as the funding of diversionary services, and that no framework or timeframe is provided for this action.

### *Legal services and family violence*

Family violence is a significant issue within Aboriginal and Torres Strait Islander communities. KLC supports Action 87 regarding the continuation of legal services for Aboriginal and Torres Strait Islander peoples, but believes that this action should be strengthened to increase funding for services. In particular, we submit that specialist, culturally appropriate Aboriginal and Torres Strait Islander women's legal services should be established in accordance with the recommendations of the CEDAW Committee in 2010. Furthermore, a well funded network of Aboriginal and Torres Strait Islander women's legal services should be established to properly represent the needs of Aboriginal and Torres Strait Islander women.

*Recommendations:*

39. *The Action Plan should include consideration of a consistent approach to land rights across all jurisdictions based on the NSW Aboriginal Land Rights Act 1983, and opportunities for Aboriginal and Torres Strait Islander communities to establish an economic base upon which current and future generations can build wealth and sustainability.*
40. *Action 66 should be strengthened in line with the Australian NGO CEDAW Action Plan to include:*
    a. *strategies to increase Aboriginal and Torres Strait Islander women's participation on public and private boards, including targets for board membership and scholarships; and*
    b. *the introduction of an annual grant round available to NGO and community led programs, funded at 25% of current funding allocated to government led leadership programs for Aboriginal and Torres Strait Islander women.*
41. *Action 67 regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples should be strengthened to include implementation of the Expert Panel's report by 2014.*
42. *Action 83 should include more specific strategies – such as funding of diversionary services – and timeframes to address the overrepresentation of Aboriginal and Torres Strait Islander people in prison.*
43. *The Action Plan should reflect an intersectional identity, in particular with health, housing, work and education actions and targets that reflect Aboriginal and Torres Strait Islander women's experience.*
44. *Action 87 should be strengthened to include an increase in funding for legal services for Aboriginal and Torres Strait Islander peoples and, in particular, the establishment of*

*specialist, culturally appropriate Aboriginal and Torres Strait Islander women's legal services and funding for a network of such services.*

## WOMEN

### Additional priorities and actions that should be included in the Action Plan

#### *Political and public life*

KLC made a number of recommendations in our submission on the draft Baseline Study that have not been picked up in the Action Plan. We recommend that these be included in the Action Plan, namely the Action Plan should include:

- targets of 30% should for women on private boards to ensure better representation of diverse women on boards;
- the provision of adequate and affordable childcare for all women who need to access it; and
- further development of the right to flexible working conditions and support by Government for employees to create such flexible positions.

#### *CEDAW Action Plan*

The CEDAW Action Plan was produced by the YWCA Australia on behalf of a wide range of non-government organisations in response to 2010 CEDAW Committee Review of Australia. All actions in the CEDAW Action Plan should be included in the National Human Rights Action Plan.

*Recommendations:*

*45. The Action Plan should include further measures to improve women's participation in political and public life, including targets of 30% for women on private boards, the provision of adequate and affordable childcare for all women who need to access it, and further development of the right to flexible working conditions and support by Government for employees to create flexible positions.*

*46. All actions in the CEDAW Action Plan should be included in the National Human Rights Action Plan.*

## Support for priorities and actions included in the Draft Action Plan

### *Gender equality in public life*

KLC supports:

- Action 112 requiring non public-sector employers with 100 or more employees to report on key gender indicators;
- Action 113 committing the Australian Government to at 40% representation of women on public sector boards; and
- Action 114 regarding a National Action Plan on Women, Peace and Security.

*Recommendation:*

*47. Actions 112, 113 and 114 should be retained in the Action Plan.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Violence against women*

KLC notes that Actions 101 to 103 support retaining existing services and legislative protections. While KLC supports the retention of existing services and protections, the Action Plan should also address ways to monitor the impact of existing services and improve protections for women who have or may be victims of violence.

Action 100 to implement the National Plan to Reduce Violence Against Women and their Children should be strengthened in order to comply with the recommendation made by the CEDAW Committee in its 2010 review of Australia (para 29) and the recommendation made in Australia's 2011 Universal Periodic Review (recommendation 86.60). We note that the Australian Government has accepted the Universal Periodic Review recommendation. Specifically, Action 100 should include funding for the implementation of the National Plan, and establishing a funded, independent body to monitor and evaluate the National Plan with input from non-government organisations, such as the Australian Women Against Violence Alliance.

KLC supports Action 105 to develop a National Domestic Violence Order Scheme; however, the timeframe for this should be brought forward to implementation in 2013, particularly given that the Scheme has been on the agenda of the Standing Committee of Law and Justice (previously the Standing Committee of Attorneys-General) for several years.

KLC supports Action 106 to respond to the Australian and New South Wales Law Reform Commissions 2010 Report on Family Violence. This Action should be strengthened to include the Australian Law Reform Commission (ALRC) 2012 Report on Family Violence and Commonwealth Laws, and to include a timeframe for implementing the response to the reports.

KLC supports Action 107 regarding the development of resources to assist bystanders to address sexual harassment in the workplace, but recommends that this Action be broadened to include a targeted campaign to significantly improve the rates of reporting of sexual harassment in the workplace within two years.[13] This is consistent with the Concluding Observations of the CEDAW Committee in its 2010 review of Australia: 'The Committee urges the State Party to adopt appropriate legislative measures as well as a preventive strategic plan in order to combat sexual harassment in the workplace' (para 39).

Action 111 regarding the provision of legal services to victims of violence should be extended to include increased funding for specialist services to respond appropriately to the needs of Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disabilities, and lesbians and gender diverse women.

### *Freedom from discrimination*

KLC notes that Action 117 commits the Australian Government to consider the recommendations made by the Senate Legal and Constitutional Affairs Committee in its 2008 inquiry on the effectiveness of the *Sex Discrimination Act 1984*. KLC recommends that this Action be strengthened to include a commitment to implement the recommendations or provide reasons for not implementing them. We also refer to our comments above on the discrimination consolidation project.

### *Women in the Australian Defence Force*

KLC supports Actions 119 and 120 regarding measures taken to address sex discrimination in the Australian Defence Force; however, Action 119 should be strengthened to include a commitment to implement recommendations from the Review into the Treatment of Women in the Australian Defence Force and Defence Force Academy.

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[13] As recommended in the 2011 CEDAW Action Plan for Women in Australia, point 8.

*Recommendations:*

48. *The Action Plan should include monitoring and strengthening of existing services and protections for women who have or may be victims of violence.*
49. *Action 100 should include funding for the implementation of the National Plan to Reduce Violence Against Women and Children, and establishing a funded, independent body to monitor and evaluate the National Plan with input from non-government organisations, such as the Australian Women Against Violence Alliance.*
50. *The timeframe for Action 105 (National Domestic Violence Order Scheme) should be brought forward to implementation in 2013.*
51. *Action 106 should be strengthened to include the ALRC 2012 Family Violence and Commonwealth Laws Report and a timeframe for implementing the Government responses to the reports.*
52. *Action 107 should implement a targeted campaign to significantly improve the rates of reporting of sexual harassment in the workplace within two years.*
53. *Action 111 should be strengthened to include increased funding for specialist family violence services to respond appropriately to the needs of Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with disability, and lesbians and gender diverse women.*
54. *Action 117 should be strengthened to include a commitment to implement the recommendations made by the Senate Legal and Constitutional Affairs Committee in its 2008 inquiry on the effectiveness of the Sex Discrimination Act 1984, or to provide reasons for not implementing the recommendations.*
55. *Action 119 should be strengthened to include a commitment to implement recommendations from the Review into the Treatment of Women in the Australian Defence Force and Defence Force Academy.*
56. *The Action Plan should include removing the reservation under CEDAW around women in active duties in the armed forces by June 2012.*

## GAY, LESBIAN, BISEXUAL AND OR GENDER DIVERSE PEOPLE

### Additional priorities and actions that should be included in the Action Plan

#### *Same-sex marriage*

KLC is disappointed that the Action Plan does not include an action to introduce same-sex marriage, as was recommended in our submission on the draft Baseline Study. As stated in that submission:

> We recommend that marriage should be available to those in same sex relationships as stated in the UPR recommendations[14]. While the Government has rejected any amendment to the *Marriage Act* 1961, we submit that not allowing those in same sex relationships to marry implies that same sex relationships are of lesser status than heterosexual relationships. While it is correct to say that relationship recognition is available in some states or territories such as the ACT and Tasmania it is not fully available in all states and territories.[15]

*Recommendation:*

*57. The Action Plan should include amendment of the Marriage Act to allow same sex marriage.*

### Support for priorities and actions included in the Draft Action Plan

KLC commends the Government's commitment to enact Commonwealth legislation which outlaws discrimination on the basis of someone being gay, lesbian, transgender or gender diverse.[16] We refer to the NACLC submission responding to the Attorney-General's Department's Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper and the KLC submission to the Australian Human Rights Commission Inquiry on the need to provide comprehensive protection from discrimination for these groups. Australia needs to

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[14] Recommendation 70 of the UPR

[15] Kingsford Legal Centre Submission on the Draf Baseline Study National Human Rights Action Plan Septmeber 2011.

[16] In the formal response to the Human Rights Council recommendations to Australia in the UPR, the Australian Government stated in relation to "Recommendations 42, 44, Accepted: The consolidation of federal anti-discrimination law into a single streamlined Act will enhance the regime and give effect to the Government's commitment to prohibit discrimination on the grounds of sexual orientation and gender identity in addition to existing grounds of protection." http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationInternational_Human_Rights.

comprehensively protect people with these attributes (or perceived attributes) from discrimination through effective discrimination law.

KLC supports the inclusion of Action 140 in relation to discrimination and harassment on the basis of sexual orientation and gender identity. KLC supports the position outlined in the NACLC submission on the Consolidation Commonwealth Anti-Discrimination Laws Discussion Paper, regarding ensuring wide and inclusive definitions in relation to sexual orientation and gender identity.[17]

KLC supports Actions 143 -145 in relation to a consistent approach to how sex can be changed legally.

*Recommendation:*

*58. Actions 140,143-145 should be retained in the Action Plan:*

[17] NACLC Submission to the Australian Attorney-General's Department's responding to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011), 1 February 2012, p 7. KLC contributed to this submission.

## PEOPLE AT RISK OR EXPERIENCING HOMELESSNESS

### Additional priorities and actions that should be included in the Action Plan

#### *State and territory governments and right to adequate housing*

The Action Plan does not identify specific actions for State and Territory governments regarding the prevention of homelessness. The Action Plan should include that the Australian Government should require State and Territory governments to legislate to protect the right to adequate housing, including the protection from arbitrary eviction as a condition of federal funding for housing.

#### *Funding for emergency (refuge) accommodation*

The Action Plan does not address the ongoing funding crisis in emergency (refuge) accommodation, which is often the only option for people experiencing homelessness other than rough sleeping. In our views these are significant omissions.

#### *Provision of mental health services as part of homelessness strategies*

***Case study: Right to health care and adequate housing for people experiencing mental illness*** [18]

*Mary is a woman with acute mental health issues. She killed her husband but had been found not guilty for reasons of mental illness. She was placed in a hospital and released conditionally, eventually finding housing in accommodation run by a non-government organisation that provides services to disabled people. Mary's mental health issues continued, and she made numerous suicide attempts.*

*After taking a dislike to her new partner, the non-government organisation evicted her from her accommodation with only four hours notice, because they "couldn't provide mental health support".*

KLC also notes that the Action Plan does not identify the provision of mental health services as a priority within the homelessness section. We note that *The Road Home: Homelessness*

[18] Based on the experience of a KLC client.

*Whitepaper*[19] identified the key role of mental health services in the prevention and shortening of homelessness. The Action Plan should include providing adequate mental health services to people experiencing homelessness and should develop plans for increasing the access of people experiencing, or at risk of, homelessness to adequate mental health services. *The Road Home* identified the strong link between homelessness and people experiencing mental illness. The Action Plan should identify that for some homeless people, long term service delivery and the provision of stable and affordable housing is the only prevention of future homelessness. The Action Plan should provide for increased funding for community based mental health services.

### *Prevention of homelessness*

KLC also believes there should be greater emphasis in the Action Plan on the prevention of homelessness. In particular the Action Plan should consider in greater detail specific projects that could be implemented to prevent homelessness, as documented in detail in *The Road Home.*

*Recommendations:*

59. *The Action Plan should identify that State and Territory governments should be required, as a condition of receipt of federal funding, to take legislative action to protect the right to adequate housing and to protect against arbitrary eviction.*
60. *The Action Plan should address the ongoing funding crisis in emergency (refuge) accommodation.*
61. *The Action Plan should prioritise the provision of mental health services, especially for people at risk of or experiencing homelessness.*
62. *There should be greater emphasis in the Action Plan on specific prevention strategies. These strategies should be drawn from The Road Home: Homelessness White Paper.*

[19] The Road Home: A National Approach to Reducing Homelessness' White Paper Commonwealth of Austraila 2008.

## Support for priorities and actions included in the Draft Action Plan

KLC supports the continuation of the implementation of the *The Road Home,*[20] and in particular the halving of the rate of homelessness by 2020 (Action 147). KLC also supports the delivery of 600 new dwellings by 2012 but notes that further investment in new social housing is required in order to meet the reduction in homelessness target by 2020 (Action 148).

*Recommendation:*

*63. Actions 147 and 148 should be retained in the Action Plan.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Legislative protections*

KLC supports Action 151 to introduce legislation to protect the rights of people experiencing homelessness; however, we believe that the Action Plan should specifically state that legislation should:

- enshrine the right to adequate housing as a statutory right;
- protected against discrimination on the basis of homelessness on the ground of social status in federal discrimination law, as recommended by NACLC.[21]

We also believe the Government should commit to introducing the legislation this year.

### *Access to justice and homelessness*

KLC supports Action 152 and the provision of legal assistance to people experiencing homelessness but believes that the connections between poverty and access to justice should be better addressed in the Action Plan, and in particular the way in which the protection of economic, social and cultural rights could prevent homelessness. There should be greater emphasis in the Action Plan in relation to the attainment of these rights for vulnerable groups,

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[20] The Road Home: A National Approach to Reducing Homelessness' White Paper Commonwealth of Austraila 2008, p8

[21] NACLC Submission to the Australian Attorney-General's Department's responding to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011), 1 February 2012, pp 31-32. KLC contributed to this submission.

but especially people experiencing homelessness. We outline this further in the access to justice section of this submission.

KLC supports Action 152 and the provision of legal assistance to people experiencing homelessness but believes that the connections between poverty and access to justice should be better addressed in the Action Plan, and in particular the way in which the protection of economic, social and cultural rights could prevent homelessness. There should be greater emphasis in the Action Plan on attaining these rights for vulnerable groups, and especially for people experiencing homelessness. We outline this further in the access to justice section of this submission.

*Recommendations:*

64. *Action 151 should be strengthened to include enacting legislation to enshrine the right of adequate housing and to protect against discrimination on the basis of homelessness on the ground of social status in federal discrimination law. Such legislation should be introduced in 2012.*
65. *Action 152 should be strengthened in conjunction with the access to justice priority area to recognise the need to protect economic, social and cultural rights in order to prevent homelessness and poverty.*
66. *The Action Plan should include requiring public tenancies to be maintained for 6 months when a person is incarcerated. Currently the tenancies in NSW are terminated after 3 months which has the impact of people leaving gaol into homelessness.*

## PEOPLE WITH DISABILITIES

### Additional actions and priorities that should be included in the Action Plan

#### *Commonwealth consolidation of anti-discrimination laws*

The Action Plan lists 'Freedom from Discrimination' as a priority for people with disabilities. However, the Action Plan does not address the failings in current Federal discrimination laws to adequately address issues of systemic discrimination against people with disabilities. The Action Plan should include a commitment to reform discrimination law, with a particular focus on increasing access to justice and reducing systemic discrimination as was recommended in NACLC's submission to the Commonwealth Consolidation of Anti-Discrimination Laws Discussion Paper.[22] As recommended in that submission:

- The consolidation bill should contain a unified definition of discrimination.
- The consolidation bill should protect against intersectional discrimination.
- A positive duty of equality should be placed on public and private bodies.
- The consolidation bill should provide that once the complainant has raised a prima facie case of discrimination, a rebuttable presumption of discrimination should arise. The respondent must then prove that the conduct was not unlawful.
- The Australian Human Rights Commission should have the power to commence proceedings in the absence of an individual complaint, and to enforce breaches of disability standards.
- The consolidation bill should include provision for complaints to be made to the Australian Human Rights Commission and the Federal Court or Federal Magistrates Court by groups or organisations on behalf of, or in the interest of, members.
- The Federal Court and the Federal Magistrates Court should become no costs jurisdictions in discrimination matters, except for vexatious or frivolous proceedings.

[22] NACLC Submission to the Australian Attorney-General's Department's responding to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011), 1 February 2012. KLC contributed to this submission.

### *Education*

KLC is disappointed that the Action Plan does not make a strong commitment towards improving access to education for students with disabilities. Education is central in ensuring that people with disabilities have greater access to employment and full community participation. The current measures within the *Disability Discrimination Act 1992* and the Disability Standards for Education have not been adequate to prevent discrimination against students with disabilities. The Action Plan should include more than a commitment to establishing a Schools Disability Advisory Committee. The Action Plan should commit to increased funding to States and Territories for education of students with disabilities. The Action Plan should also require that any funding agreement between the Commonwealth and States and Territories require that funds be spent in line with the United Nations Convention on the Rights of Persons with Disabilities.

***Case study: The Right to equal access to education***[23]

*Michael is a Year 9 student and goes to the local public school. All the students in his year are given a netbook computer to use for school work and to access the Digital Education Revolution. The netbooks are purchased with funding provided by the Commonwealth Government. Students are told that at the end of year 12 the netbook is theirs to keep. All the students are very excited about getting a netbook each to keep.*

*Michael cannot use a netbook because of his vision impairment. He is given a different type of computer but is told that, because his laptop was more expensive and was purchased partly with Commonwealth funding and partly with state funding he will not get to keep his laptop. Michael feels like a second class citizen. While all his friends brag about having a new computer that is 'theirs' Michael knows he will have to hand his back when he finished school. Because Michael's laptop is different to everyone else's it takes months before he is set up properly and has the same access as everyone else.*

*Recommendations:*

*67. The Action Plan should include actions to reform anti-discrimination laws relating to people with disabilities, including by adopting NACLC's recommendations.*

[23] Based on a case of a KLC client.

*68. The Action Plan should commit to increased funding to states and territories for education of students with disabilities.*

*69. The Action Plan should require that any funding agreement between the Commonwealth and states and territories require that funds be spent in line with the United Nations Convention on the Rights of Persons with Disabilities.*

## Support for priorities and actions included in the Draft Action Plan

### *National Disability Strategy*

KLC supports the Government's commitment to the National Disability Strategy (NDS) and in particular the whole of government approach to improving inclusion and recognising the economic, cultural and social rights of people with disabilities.

### *National Disability Insurance Scheme*

KLC supports Actions 160 and 168 to build the foundations for a National Disability Insurance Scheme. These Actions should be a matter of priority for the Government as was recommended in our submission on the draft Baseline Study. As stated in that submission:

> For people with catastrophic injuries it is inherently unjust that some have access to lifetime care where damages can be claimed, while those who cannot bring a Court action have no access to money for essential lifetime care.[24]

*Recommendation:*

*70. Actions 154, 160 and 168 should be retained in the Action Plan.*

*71. The National Disability Insurance Scheme should be implemented as a matter of priority.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Accessibility package*

KLC supports Action 155 to implement an Accessibility Package. Participation in community life is essential for people with disabilities. The Action Plan should be strengthened by including a

[24] Kingsford Legal Centre, *Submission on the Draft Baseline Study – National Human Rights action Plan*, September 2011, p 20.

commitment to ongoing funding to increase the accessibility of public places and private spaces open to the public, public transport and goods and services. The Government should create additional Disability Standards to create minimum standards for accessibility in consultation with the disability sector. Use of Disability Standards should be complemented by increasing access to the Federal Courts where a breach of a Disability Standard has occurred. See our comments above under disability and the consolidation of Commonwealth anti-discrimination laws.

### *Disability Support Pension*

While KLC supports initiatives that increase workforce participation of people with disabilities, participation should not be achieved by reducing accessibility to the Disability Support Pension (DSP). KLC is concerned that the Action Plan aims to move people with disabilities off the DSP and onto lower paying benefits such as the Newstart Allowance in an effort to push people with disabilities into work (Action 157). The Action Plan is at risk of reducing the human rights of people with disabilities and should be amended to ensure that people with disabilities and their employers are supported appropriately so that those who can work are not placed in unsuitable employment or disadvantaged by the new rules.

### *Health care, support and accommodation*

KLC supports the Government's plan to increase funding to the disability sector through the National Disability Agreement, funding to States and Territories to construct or acquire supported accommodation facilities, the Supported Accommodation Innovation Fund and the National Mental Health Reform package (Actions 159, 169 and 173). Access to adequate health care, support and accommodation is essential for people with disabilities to live with dignity and respect and to have full access to their human rights. The Action Plan should be strengthened to include enacting legislation to enshrine the right to the highest attainable level of healthcare regardless of a person's economic situation.

### *Australia Public Service*

KLC supports increasing the number of people with disabilities employed within the Australian Public Service (APS) (Action 158). The Action Plan should be strengthened by including targets to bring the percentage of people with disabilities employed by the APS in line with the percentage of people within the community with disabilities and to ensure that people with disabilities are represented at all levels of the APS. This should be complemented by strategies to increase the funding available to APS employees with disabilities for workplace adjustments

and training opportunities. This commitment should be reflected within state and territory public services and within local government.

### *Legal capacity*

*Non-therapeutic sterilization*

KLC supports the commitment towards clarifying and improving laws and practices governing the sterilisation of women and girls with disabilities (Action 170). This action should be strengthened by including the enacting of legislation, by 2014, to prohibit non-therapeutic sterilisation of any child unless there is a serious threat to health or life, and of any women in the absence of fully informed and free consent. This is consistent with recommendations made in Australia's 2011 Universal Periodic Review (recommendation 86.39) and 2010 Review by the CEDAW Committee (para 43).

*Disability discrimination*

KLC supports the commitment to funding community legal centres that have a primary focus of providing legal information and help in relation to the *Disability Discrimination Act 1992* (Action 171). However, current funding levels are not sufficient to ensure that everyone who needs help receives it. The Action Plan should be strengthened to increase the amount of funding to community legal centres who provide advice on discrimination law.

Additionally, many people with disabilities who have experienced discrimination, particularly discrimination in employment, will need access to a range of legal advice and assistance. Many people with disabilities will choose to make complaints under State or Territory laws or under the *Fair Work Act 2009.* The Action Plan should be strengthened to ensure that the *Disability Discrimination Act 2009* (or any future consolidated discrimination law) provides the highest level of protection and access to justice.[25] As noted above, the Action Plan should also be strengthened by including a commitment to fund specialist employment advice services within community legal centres.

*Recommendations:*

*72. Action 155 should be strengthened to include:*

[25] See Recommednation 10 below.

a. *a commitment to ongoing funding to increase the accessibility of public places and private spaces open to the public, public transport, and goods and services; and*
b. *the use of Disability Standards to legislate minimum standards for accessibility.*

73. *The Action Plan should be amended to ensure that people with disabilities and their employers are supported appropriately so that those who can work are not placed in unsuitable employment or disadvantaged by the new rules.*
74. *Actions 159,169 and 173 should be retained in the Action Plan, but they should be complemented by the inclusion of an action to enact legislation to enshrine the right to the highest attainable level of healthcare regardless of a person's economic situation.*
75. *Action 158 should be strengthened to include targets for increasing employment of people with disabilities with the APS, State and Territory public services and at the local government level. It should also be complemented by increasing the funding available for workplace adjustments and training for people with disabilities employment within the APS.*
76. *Action 170 should be strengthened to include enacting legislation, by 2014, to prohibit non-therapeutic sterilisation of any child unless there is a serious threat to health or life, and of any women in the absence of fully informed and free consent.*
77. *Action 171 should be strengthened to a commitment to increase funding to community legal centres to provide legal information and help on disability discrimination, and a commitment to fund specialist employment advice services within community legal centres.*

## Additional priorities and actions that should be included in the Action Plan

### *Access to education services in prison*

The Action Plan should include strategies to realise the right to rehabilitation and education in prison. In 2003, Kingsford Legal Centre ran a case, *Middleton v Commissioner of Corrective Services of NSW and Anor [2003] NSWSC 136* concerning the ability of a prisoner who had transferred from Queensland to NSW to access a computer in order to complete his university studies. Despite the importance of access to education programs, our client, Mark Middleton, was unable to access a computer in order to complete his studies. There was no effective legal remedy for this. We are concerned about the lack of access to adequate and appropriate education programs for prisoners and also the failure of the law to protect this right to education for prisoners.

### *Right to vote for prisoners*

The Action Plan should include strategies to implement the right to vote for all prisoners. Australian citizens who have been sentenced for more than three years in prison do not have the right to vote in federal elections, while they are serving their sentences. Article 25 of the ICCPR provides that all citizens of a country are to be afforded the right to vote and to participate in the conduct of public affairs 'without unreasonable restrictions'. The deprivation of the right to vote imposed on some prisoners does not meet the obligation in Article 25.

### *Cancellation of visas of long term permanent residents of Australia*

The Action Plan should include actions to abolish visa cancellation on the basis of the character test. KLC is currently in partnership with the NSW Legal Aid Commission to represent those non citizens who have committed a serious criminal offence and whose visa may be cancelled by the Minister for Immigration on character grounds. We are concerned about the impact on long term permanent residents, who may have lived here almost their entire lives, of being forcibly removed from Australia.

Frequently these people have no firm connection with their country of citizenship, may not speak that language and be at risk of harm to be returned. Furthermore, they may have family and community ties here, and deportation under these provisions may result in the separation of

a parent from their children. We are concerned that Australia may be breaching its obligations under the Convention on the Rights of the Child to return parents to their country of citizenship. Although the relevant Australian law requires the Minister to take the best interests of the child into consideration before cancelling a person's visa, the Commonwealth Ombudsman has found that in some cases, the Minister has proceeded to cancel visas even where the Minister has been advised that the cancellation will have a detrimental effect on the person's children.[26]

As many of these people have lived in Australia almost their entire lives, it is Australia's responsibility to rehabilitate them, rather than deport them to countries with which they have no or little recent connection.

### *Post release services*

Aboriginal Legal Services should be funded to provide preventative services to those in prison to help with post release. By providing these types of 'field officer' support services, Aboriginal and Torres Strait Islander peoples can be supported in their transition back into the community. This would prevent the risk of reoffending. The lack of affordable and appropriate housing for Aboriginal and Torres Strait Islander peoples leaving prison is a key factor in re-offending and reinforcing disadvantage. As outlined earlier in our submission there should be greater access to housing assistance upon release to prevent the large numbers of ex-prisoners who are released into homelessness.

*Recommendations:*

78. *The Action Plan should include actions to realise the right to rehabilitation and education in prison, including law reform to protect this right and strategies to improve access to adequate and appropriate education programs for prisoners.*
79. *The Action Plan should include actions to realise the right to vote for all prisoners.*
80. *The Action Plan should include actions to abolish visa cancellation on the basis of the character test.*
81. *The Action Plan should include funding Aboriginal Legal Services to provide preventative services to those in prison to help with post release.*

[26] Commonwealth Ombudsman, *Administration of s501 of the Migration Act 1958 as is applies to long-term residents,* Report No. 01/2006 (2006) at paras 3.35- 3.36

## Improvements to priorities and actions included in the Draft Action Plan

### *Oversight mechanisms*

KLC supports the actions listed under this priority area but believes that further actions should be included to establish an independent oversight mechanism, or 'national prevention mechanism' that complies with the requirements under the Optional Protocol to the Convention Against Torture.

### *Freedom from discrimination*

KLC supports Action 187 to continue to provide funding to community legal centres providing legal help and information to people in custody but believes that this Action needs to be strengthened to improve people in prisons right to be free from discrimination. Specifically, funding should be increased to community legal centres to meet the unmet legal need in this area. Further, anti-discrimination laws should be amended to provide adequate protection from discrimination on the basis of a person's criminal record. Failure to protect against such discrimination perpetuates the disadvantages already being faced by those who have already been through the criminal justice system. KLC supports the recommendations made in the NACLC submission on the Consolidation of Anti-Discrimination Laws Discussion paper.[27]

*Recommendations:*

82. *The 'Oversight mechanisms' priority area should include establishing a national prevention mechanism that complies with the requirements under the Optional Protocol to the Convention Against Torture.*
83. *Action 187 should be strengthened to include increased funding to community legal centres to provide legal help and information to people in custody.*
84. *The Action Plan should include amending anti-discrimination laws to provide adequate protection from discrimination on the basis of a person's criminal record, in line with NACLC's recommendations.*

[27] NACLC Submission to the Australian Attorney-General's Department's responding to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (September 2011), 1 February 2012, pp 33-34. KLC contributed to this submission.

## Additional priorities and actions that should be included in the Action Plan

### *Processing of asylum seekers in the community*

In the context of the current system for processing asylum seekers, KLC supports the Government's commitments to ensuring that children and families seeking asylum are moved into community-based detention arrangements rather than immigration detention facilities (Actions 193-195). However, these commitments assume the continuation of the Government's policy of mandatory immigration detention for all on-shore asylum seekers. As outlined in our Submission on the Baseline Study, we are opposed to the continuation of mandatory detention policies for asylum seekers. We support the recommendation of the Australian Human Rights Commission that the Government amends the Migration Act so that detention occurs only when necessary, only for a minimal period, and where it is a reasonable and proportionate means of achieving a legitimate aim, and with decisions to detain people being subject to prompt review by a court.[28]

### *Maximum period of immigration detention*

If the Australian Government decides to continue mandatory detention for all on-shore asylum seekers, a maximum period for detention should be set. After that time, the Minister for Immigration should be required to provide cogent, public reasons for why any asylum seeker is detained for longer than the maximum period rather than moved into the community while their claim is being processed; for example, if there is serious concern about risk to the community. We note the National Inquiry into the Children in Immigration Detention recommended that no child should be held in detention for longer than four weeks, and argue that this maximum period should be set for all asylum seekers.[29]

### *Access to social security*

KLC notes that the Refugees, Asylum Seekers and Migrants priority area does not include reform and review of the current restrictions on accessing social security for many newly arrived

[28] Australian Human Rights Commission, 'Taking Stock: Australia's Human Rights Record", Submission by the Australian Human Rights Commission under the Universal Periodic Review Process, 2010, at page 18.

[29] Inquiry into the Children in Immigration Detention, at 17.4.1, Recommendation 1.

migrants. This includes the qualifying residence periods and the 'newly arrived residents waiting period' that applies to most social security payments. Although there are some exceptions, the general rule for newly arrived residents is that they are unable to access income support payments for at least two years after they have been permanent residents. For many newly arrived migrants, this is the period during which they need the most support to settle into a new way of life. Australia has an obligation under the International Covenant on Economic and Social Rights to recognise the right of everyone to social security.[30] We submit that this obligation should be given fuller application by removing the newly arrived residents waiting period to social security payments in the *Social Security Act 1991*.

*Recommendations:*

*85. The Action Plan should include ending mandatory indefinite detention of asylum seekers.*

*86. The Action Plan should include ensuring all asylum seekers can live in the community until their claims are determined.*

*87. If the policy of mandatory detention of asylum seekers is to be retained, the Action Plan should include the introduction of a maximum period of detention of four weeks for all asylum seekers. The Minister for Immigration should be required to provide cogent, public reasons for why any asylum seeker is detained for longer than four weeks.*

*88. The Action Plan should include the removal of the waiting period for newly arrived residents from the Social Security Act 1991.*

## Support for priorities and actions included in the Draft Action Plan

KLC supports the Government's ongoing commitment to using the Refugee Convention criteria (Action 188), adhering to the principle of *non-refoulement* (Action 189) and the inclusion of a wider range of criteria to allow the grant of a protection visa in circumstances that engage Australia's *non-refoulement* obligations under human rights treaties other than the Refugees Convention (Action 190).

We also support the Government's continuation of funding to the Translating and Interpreting Service (Action 207).

[30] Article 9, International Covenant on Economic and Social Rights

*Recommendation:*

*89. Actions 188-190 and 207 should be retained in the Action Plan.*

## Improvements to priorities and actions included in the Draft Action Plan

### *Reviews of conditions and time spent in detention*

Actions 193 and 197 refer to the Government's ongoing regular reviews of the conditions and lengths of time being spent in detention by asylum seekers, as well as continuing the Ombudsman's and Australian Human Rights Commission's general powers to review all conditions within immigration detention centres. If the Australian Government decides to continue mandatory detention for all on-shore asylum seekers, we believe these Actions are too broadly expressed and need to be more detailed if they are to ameliorate the deleterious impact of detention policies. While section 486O of the *Migration Act 1958* provides for the Commonwealth Ombudsman to provide the Minister of Immigration with an assessment of the appropriateness of the arrangements for the detention of a person who has been in detention for two years or more, we propose that the period of two years is far too long. No asylum seeker should be in detention for as long as two years under any circumstances. The trigger for the Ombudsman's report to the Minister should occur at a much earlier stage in detention.

### *Access to Justice*

KLC supports Action 206 to continue ongoing funding of community legal centres to provide legal information and assistance about immigration and refugee matters, and recommends that this funding be increased. Our comments in relation to Access to Justice are outlined above.

### *Community attitudes and multiculturalism*

KLC supports the continuation of the projects listed at Items 208 to 219 as measures implemented to promote the benefits of multiculturalism. However, we are concerned that the Action Plan does not set out a broader framework for improving community attitudes and multiculturalism.

We note item 211 in particular, which states that the Australian Government will conduct an inquiry into the responsiveness of Australian Government services to clients disadvantaged by cultural or linguistic barriers. Many of our clients with cultural and linguistically diverse (CALD) backgrounds experience frequent disadvantage because of difficulties in dealing with Australian

Government departments. For example, many of our clients face difficulties in dealing with Centrelink, the Tax Office and the Department of Immigration. We recommend that this inquiry include a comprehensive examination of how all Australian Government departments and agencies respond to clients of CALD backgrounds, and that it be extended to State and Territory Government departments and agencies.

***Case Study: improving government services to the CALD community***

*Maha is a newly arrived migrant. She has basic spoken English skills but is illiterate in both English and in her first language. Maha's young daughter has high care needs on account of her disability, and Maha is advised by her doctor to apply for Carers Allowance at a Centrelink office. Her claim is rejected because Centrelink decided it needed more information about Maha's daughter's disability. Maha receives a rejection letter for her claim, but does not understand it, so does not request a review from Centrelink. Centrelink does not follow up the rejection with a phone call. Two years down the track Maha's Doctor asks her if she is receiving Carers Allowance and follows this up with Centrelink. Maha is granted Carer Allowance, but she does not receive backpay because she did not appeal against the first rejection in time, even though she could not understand the letter that was sent to her explaining her appeal rights. Centrelink should have followed up the rejection letter with a telephone call to Maha in her first language to explain the decision and outline her appeal rights.*

*Recommendations:*

*90. Action 193 and 197 should provide for implementation of more rigorous review processes of conditions and time spent in detention, including a trigger for the Ombudsman's review and report to the Minister at an earlier stage in detention.*

*91. Action 206 should be strengthened by increasing funding to community legal centres to provide legal information and assistance in relation to refugee and immigration matters.*

*92. The Action Plan should include a broader framework to improve community attitudes and multiculturalism, in addition to the specific actions identified.*

*93. Action 211 should be strengthened to include a comprehensive examination of how all Australian Government departments and agencies respond to clients of CALD backgrounds, and be extended to State and Territory Government departments and agencies.*