



UnitingJustice Australia

**Comments on Australia's National Human
Rights Action Plan Exposure Draft 2012 (the
Exposure Draft)**

March 2012

Contact

Rev. Elenie Poulos
National Director
UnitingJustice Australia
PO Box A2266
Sydney South NSW 1235
Phone: 02 8267 4239
Email: ElenieP@nat.uca.org.au

Introduction

UnitingJustice Australia is the justice unit of the National Assembly of the Uniting Church in Australia, pursuing matters of social and economic justice, human rights, peace and the environment. It works in collaboration with other Assembly agencies, Uniting Church synod justice staff around the country, and with other community and faith-based organisations and groups. It engages in advocacy and education and works collaboratively to communicate the Church's vision for a reconciled world.

UnitingJustice Australia exists as an expression of the Uniting Church's commitment to working toward a just and peaceful world. This commitment arises from the Christian belief that liberation from oppression and injustice is central to the incarnation of God through Jesus Christ. We welcome this opportunity to provide comment on Australia's National Human Rights Action Plan Exposure Draft.

The Uniting Church in Australia is committed to involvement in the making of just public policy that prioritises the needs of the most vulnerable and disadvantaged in our society. In 1977, the Inaugural Assembly of the Uniting Church issued a Statement to the Nation.¹ In this statement, the Church declared that "our response to the Christian gospel will continue to involve us in social and national affairs." In part, this statement reads:

We pledge ourselves to seek the correction of injustices wherever they occur. We will work for the eradication of poverty and racism within our society and beyond. We affirm the rights of all people to equal educational opportunities, adequate health care, freedom of speech, employment or dignity in unemployment if work is not available. We will oppose all forms of discrimination which infringe basic rights and freedoms.

The Uniting Church's support for human rights is based on how we understand the Christian faith. Christians believe that human beings are created in the image of God who is three persons in open, joyful interaction. As bearers of God's image, human beings are inherently deserving of dignity and respect. The image of God that is reflected in human life, the form of life that corresponds to God, is the human community. Humans, made in God's image, are inherently relational, finding life and sustenance in relationship and community. Being called into community with the whole humankind as we are, when one person is diminished, we are all diminished.

As Christians we are called to live as faithful disciples of Jesus who came to fulfill the hope of the prophets: to bring good news to the poor, to proclaim release to the

¹ This statement is available at: <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>

captives and recovery of sight to the blind and to let the oppressed go free. This is a mission to work for justice and resist injustice, and to stand in solidarity with the poor and the oppressed.

The Uniting Church believes that it has a responsibility to contribute to the building of societies in which all people are valued and respected. In the context of public policy and international affairs, this means participating the development of systems, processes and structures, such as the international human rights system and the protection of human rights domestically, that function to both protect and promote human dignity and peace, and hold all of us mutually accountable in this.

The Uniting Church's support for human rights and the upholding of the dignity of all people was fully articulated in its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*, adopted by the National Assembly of the Church in 2006.² As well as laying out the theological basis of our commitment to human rights, this statement expresses the Church's support for "the human rights standards recognised by the United Nations," which express the birthright of all people to "all that is necessary for a decent life and to the hope for a peaceful future."

In *Dignity in Humanity*, the Uniting Church also urged the Australian Government to fulfill its responsibilities under the human rights covenants, conventions and treaties that Australia has ratified or signed and pledged to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable. It is these promises that continue to drive the Church's involvement in the development of just and responsible government policy and practice in Australia. It is in accordance with these beliefs that UnitingJustice Australia makes the following submission on the details of the National Human Rights Action Plan Exposure Draft (the Exposure Draft).

General Comments

² <http://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

UnitingJustice has elected to make a detailed submission on pertinent sections of the Exposure Draft on the following pages. However, there are several general comments that are applicable to each of the sections:

- UnitingJustice is disappointed that the Exposure Draft generally focuses on existing activities, undertakings and commitments;
- many of the recommendations lack specific timeframes, which fails to demonstrate a definitive commitment to the implementation of positive changes for all Australians;
- while the Australian Government has previously indicated its desire to engage with state and territory governments to implement the National Human Rights Action Plan, UnitingJustice is concerned that, with a few notable exceptions, only the Victorian Government is mentioned in the Exposure Draft. We call on all state and territory governments to take their obligations seriously and contribute to the National Human Rights Action Plan and the associated consultations.

Protection and Promotion of Human Rights in Australia

General Comments

UnitingJustice Australia does not support the statement that “Australia has a strong record of protecting and promoting human rights both domestically and abroad.”³ We note the findings of the Brennan Report which concluded that the protection of human rights under Australia’s current framework “is fragmented and incomplete, and its inadequacies are felt most keenly by the marginalised and the vulnerable.”⁴ While the Government’s commitment to “positively engage with the UN human rights system, promote the role of national human rights institutions and promote human rights in the Asia Pacific region and internationally” is welcomed, we are concerned that recent comments questioning this commitment are not adequately addressed in the Exposure Draft. Several UN treaty bodies have noted Australia’s failure to seriously consider their recommendations or views, and have highlighted that many international human rights obligations are not incorporated into our domestic laws.⁵

³ Page 4 Exposure Draft

⁴ Brennan, F., Kostakidis, M., Williams, T. & Palmer, M. (2009). ‘National Human Rights Consultation Report,’ Attorney-General’s Department, p. 127.

⁵ See, for example: ‘Concluding Observations of the Committee on Economic, Social and Cultural Rights, Australia,’ 42nd Session, UN Doc E/C. 12/AUS/CO/4; ‘Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia,’ 46th Session, UN Doc CEDAW/C/AUS/CO/7.

2. The Australian Government will continue to work with States and Territories to take the necessary steps towards ratifying the Optional Protocol to the Convention Against Torture.

Torture is among the most heinous of all human rights violations. It can never be justified and must be vigorously opposed wherever it occurs, whomever the perpetrators and victims. The utmost vigilance and transparency is required to ensure adherence to all necessary methods of prevention and the full use of international law. In recent years, the Uniting Church in Australia has commented several times on the human rights abuses taking place in Australia's detention facilities, and many of our chaplains have experienced these abuses first hand.

Accession to the Optional Protocol to the Convention Against Torture (OPCAT) will enhance Australia's international reputation as a country that takes human rights seriously. The Australian Government has recently promoted its commitment to the international human rights system⁶ and accession to the Optional Protocol would continue this trend, as well as enabling Australian representation on the UN Subcommittee for the Prevention of Torture. Australia's accession would also set an example for neighbouring countries and support the Australian Government's work to strengthen human rights in our region.

The Optional Protocol offers an improved mechanism for monitoring and preventing any kind of torture or cruel, inhuman or degrading treatment or punishment in detention and prison facilities. This process assists State Parties in monitoring their facilities and supports the continuous improvement in facilities. It is worth noting that the recommendations of the Subcommittee for the Prevention of Torture are not binding – States are required to “examine the recommendations of the Subcommittee and enter into dialogue with it on possible implementation measures.”⁷ UnitingJustice welcomes the recent tabling of a National Interest Analysis that proposes Australia ratify the OPCAT and urge the Government to ensure this is included in the National Human Rights Action Plan.

18. The Australian Government will develop legislation which will consolidate Commonwealth anti-discrimination laws to remove unnecessary regulatory

⁶ Examples of this include Australia's accession to the Optional Protocol to the United Nations Convention on the Elimination of all Forms of Discrimination Against Women and the tabling of National Interest Analysis proposing Australia ratify the United Nations Convention on the Rights of Persons with Disabilities.

⁷ Article 12(4)

overlap, address inconsistencies across laws and make the system more user-friendly. It will also consider the design of the compliance regime and complaints processes.

UnitingJustice welcomes the Government's plans to address inconsistencies across anti-discrimination laws in Australia, and has made several submissions to the consultation process to date. However, we are disappointed to see that, despite tremendous public support, the Exposure Draft offers no commitment to the implementation of a Human Rights Act for Australia. In 2008, the Uniting Church called on the Australian Government to introduce a national human rights charter that would fulfill our international obligations as outlined in the human rights treaties to which we are a signatory.⁸

A Human Rights Act would provide the most comprehensive framework for protecting human rights in Australia. It would act as a firm foundation, and the inspiration, for the development of many other initiatives to protect human rights. Such an Act would serve as a checklist for governments in formulating their policies and for the courts when examining laws, and would assist in doing the following:

- recognise and protect the human rights of all people in Australia;
- ensure that human rights are respected by our government;
- improve government policy and decision making – the government would need to consider human rights when drafting laws, developing policy and delivering services;
- protect economically and socially vulnerable people who are more likely than others in Australia to have their human rights breached;
- be an important practical tool for advocates of those facing discrimination, disadvantage or exclusion;
- assist Australia in meeting its obligations under the United Nation treaties we have promised to uphold; and
- help all Australians to become more aware of their rights and the rights of others, and contribute to building a culture of respect for human rights in Australia.

Support for an instrument that would implement our international human rights commitments and protect the human rights of all Australians is consistent with the Uniting Church's strong commitment to the defence and promotion of human rights.

The current system of human rights protection provides few options for those in the

⁸ <http://www.unitingjustice.org.au/human-rights/uca-statements/item/482-a-uniting-church-response-to-human-rights-legislation>

Australian community who feel their rights have been violated. Australia's commitments at the United Nations, while conferring a certain degree of political and social pressure on the Government, are not legally binding in Australia unless they are incorporated into domestic law.⁹ It would be desirable for the Australian Parliament to have direct mechanisms for ensuring its compliance with the human rights obligations that Australia has embraced. The implementation of an Australian Human Rights Act would rectify this.

An Act would clearly set out the rights of all Australians, and serve as a checklist for government in formulating their policies and activities and for the courts when examining laws. Alone it is not the answer to all human rights problems but it has the potential to become an important part of our democratic system.

21. The Australian Government will prioritise human rights education.

UnitingJustice welcomes the commitment to prioritise human rights education in Australia. A general lack of community understanding about rights and obligations, fueled by selected sensationalist media outlets, has directly contributed to the negative perceptions some people in Australia hold towards asylum seekers, refugees and Indigenous Australians. By addressing the misconceptions and highlighting the positive contributions these groups in particular have and continue to make to Australian society, we believe that many negative attitudes could be ameliorated, and a culture of equality, tolerance and inclusion more widely promoted.

We are disappointed, however, that the funding outlined in the Exposure Draft does not respond to the recommendations echoed in many submissions to the Draft Action Plan. Specifically, there is a need for the inclusion of Human Rights Education in our university sector, and as a key professional development area for law enforcement officers in Australia. While we welcome the decision to “enhance support for human rights in primary and secondary schools,” we are concerned by the lack of explicit information as to how this will be achieved, particularly in light of the division between the Commonwealth and State/Territory Governments with regards to the responsibility for education.

We would remind the Australian Government that, as a signatory to the Convention on the Rights of the Child (CRoC), there is an obligation under Article 29(1)(b) that children should be educated with regards to “the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.” The Exposure Draft makes no reference to the fact that unless teacher education courses nationwide include a mandatory Human Rights Education

⁹ Nulyarimma & Others v Thompson & Ors (1999) 96 FCR 193

component, then there is little chance of success for school-based programs. Existing and pre-service teachers must be adequately resourced to aid children to understand and appreciate human rights in both the Australian and international contexts.

24. The Australian Government will review legislation, policies and practices for compliance with the seven core UN human rights treaties to which Australia is a party, commencing with legislation administered by the Attorney-General's Department.

We acknowledge the Australian Government's stated commitment to upholding the seven core United Nations human rights treaties, and support the decision that reservations to the treaties to which Australia is a signatory will be reviewed. However, of great concern to UnitingJustice is the seeming unpreparedness of the Australian Government to acknowledge the vital importance of other human rights treaties and instruments. In particular, we refer to:

- the United National Declaration on the Rights of Indigenous Peoples (UNDRIP),
- the 1951 Convention Relating to the Status of Refugees (the Refugee Convention),
- the International Convention on the Protection of the Rights of All Migrant Workers and their Families (CPRMW),
- the Convention for the Protection of All Persons from Enforced Disappearance (CED),
- the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR),
- the Optional Protocol to the Convention on the Rights of the Child,
- the 1954 Convention Relating to the Status of Stateless Persons, and
- the 1961 Convention on the Reduction of Statelessness.

These treaties facilitate the realisation of numerous rights that we believe to be fundamental – rights that are not recognised or protected in the seven core treaties that the Australian Government has agreed to review. We encourage the Government to expressly acknowledge these treaties and include them in conversations surrounding our obligations under the seven core UN treaties. Where the Australian Government is unwilling to implement a treaty in full, the reasons for this should be made available to members of the public for community discussion and debate, with an explanation as to how human rights will be impacted by a partial-accession.

UnitingJustice is also concerned that no date is included in the Exposure Draft for the review to be finalised. We recommend that this take place by the end of 2012 and

that this timeframe is reflected in any future recommendations. We would also welcome the inclusion of a clause that called for regular review of the treaties to which we are a party, on either an annual or biannual basis.

The Human Rights Concerns of the General Community

37. The Australian Government will continue to ensure that the Independent National Security Legislation Monitor has the power to review the practical operation of Australia's counter-terrorism and national security legislation on an ongoing basis. The Monitor's reports will be presented to Parliament in accordance with the Independent National Security Legislation Monitor Act 2010. The IGIS and the PJCS also provide additional oversight mechanisms which complement the work of the Monitor.

While UnitingJustice is pleased to see a commitment to the establishment of an ongoing National Security Legislation Monitor, we express our continued concern that existing counter-terrorism agencies and strategies represent a genuine threat to fundamental human rights in Australia as guaranteed by the international treaties to which we are a signatory.

Of particular concern to UnitingJustice is the closed nature of the Australian Security Intelligence Organisation (ASIO) with regards to their assessments of asylum seekers in detention. Those awaiting or undergoing assessment are denied access to the rule of law under existing legislation, and have no right of appeal if the final ruling is an adverse one. With asylum seekers, including unaccompanied minors, languishing in remote and isolated detention centres for indefinite periods, UnitingJustice calls for the National Human Rights Action Plan to reflect the need for immediate reforms in this area.

43. The Australian Government will continue to support victims of trafficking through the Support for Victims of People Trafficking Program, involving case management for victims of trafficking who have been referred by the Australian Federal Police.

Disappointingly, we note that there is still no access to crimes compensation funds for victims of people trafficking.

The obligation to provide compensation to victims of serious crimes and human rights abuses is contained in a number of treaties to which Australia is a signatory, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime. Only a handful of the 180 victims of human

trafficking since 2004 have been able to access compensation through State-based compensation schemes for victims of crime. We recommend the implementation of a federal fund to ensure compliance with our international obligations.

45. The Australian Government will monitor Australia’s strategy to combat people trafficking to ensure it is in line with international best practice, including the OHCHR Principles and Guidelines.

46. The Australian Government will continue to investigate and criminally prosecute trafficking offenders.

55. The Australian Government will continue to work with countries in our region to encourage ratification and implementation of key international legal instruments used in the fight against people trafficking and people smuggling, particularly the UN Convention Against Transnational Organised Crime and its supplementary protocols on people trafficking and people smuggling.

UnitingJustice emphasizes that ‘trafficking’, as defined by article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁰

While UnitingJustice acknowledges the very serious problem of people trafficking, we are concerned at the interchangeable way in which ‘trafficking’ and ‘smuggling’ are used in the Exposure Draft, particularly in light of recent amendments to the Migration Act.

We recognise that people smuggling must be tackled at its source and priority must be given to long-term support for peace-making programs in countries prone to violence, abuse and persecution. However, we emphasise that the punishment of people who have already suffered and who are exercising their legal right to seek asylum in order to ‘send a message’ to another group of people is not only contrary to the Government’s own New Directions in Detention policy, it is in itself a form of abuse. We support the development of a genuine regional protection framework, and believe that the key goal should be its ability to improve the prospects of a durable settlement option for displaced people in the region.

¹⁰ <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

We would remind the Government that any attempts to bolster our regional protection framework must comply with our international obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air (Protocol Against Smuggling), supplementing the United Nations Convention against Transnational Organised Crime, which was ratified by Australia in 2004. Article 19 of this Protocol states

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Under the Protocol Against Smuggling, any measures introduced to curtail people smuggling must be consistent with a Member State's obligations under the Refugee Convention. We are concerned that actions such as the interception of vessels en route to Australia that are carrying asylum seekers may be undertaken under the guise of bolstering our defence against genuine people trafficking. We urge the Government to make a clearer distinction between people brought to Australia unwillingly, and those who journey here seeking freedom from persecution. There is an ongoing disconnect between Australia's international legal obligations as they pertain to asylum seekers, and the federal policies enacted. No solution to the genuine problem of people trafficking should be sought at the expense of the rights of asylum seekers.

61. The Australian Government will implement its Clean Energy Future Plan, including a carbon price and financial assistance for those who need help the most,

particularly pensioners and low- and middle-income households.

While we applaud the significant work that has been undertaken by the current government in this area, UnitingJustice also supports the inclusion of dedicated funding for the research and development of innovative clean renewable technologies as part of a long-term climate change strategy. This research and technology should be available not only to all Australians, but also to our vulnerable brothers and sisters in the Pacific region who are at great risk from the adverse effects of climate change. Assisting developing countries through the transfer of technology is an obligation under both the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.¹¹

Article 4.5 of the UNFCCC states that developed country Parties and other developed Parties included in Annex II shall:

take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly developing country Parties, to enable them to implement the provisions of the Convention.

The Human Rights Experience of Specific Groups in Australia: Aboriginal and Torres Strait Islander Peoples

63. The Australian Government will work with the National Congress of Australia's First Peoples. This will include considering priorities identified by both the Australian Government and the National Congress, providing \$29.2 million for its establishment, and negotiating an engagement framework for communication between all parties.

While UnitingJustice supports consultation with the National Congress of Australia's First Peoples, we would encourage the Government to include reference to other peak Aboriginal and Torres Strait Islander groups, such as the Aboriginal and Torres Strait Islander Legal Service (ATSILS). Additionally, reference to the importance and value of genuine and culturally-appropriate consultation with all First Peoples should be included in the National Human Rights Action Plan. UnitingJustice notes with disappointment the lack of appropriate engagement with many Indigenous communities with regards to the Stronger Futures legislation, including 'fly-in, fly-out' meetings, lack of seasonal consideration with regards to including as many members of the community as possible, overly-formal arrangements for the preparation and recording of transcripts, and the absence of consultation and

¹¹ See UnitingJustice's submission to the Senate Select Committee on Climate Policy for further details: <http://www.unitingjustice.org.au/climate-change/submissions/item/648-inquiry-into-climate-policy>

information material printed in Indigenous languages.

While the commitment to build a “policy platform underpinned by the UN Declaration on the Rights of Indigenous Peoples” is welcomed, UnitingJustice does not believe that this signals a genuine preparedness to accept our obligations under this important treaty. We call for a full implementation of the Declaration in the National Human Rights Action Plan.

65. The Government has also introduced legislation based on the results of the Stronger Futures Consultations to provide for a sustainable, long-term approach to supporting Aboriginal people in the Northern Territory.

UnitingJustice acknowledges that there is no simple solution to the complex set of problems outlined in the Stronger Futures Report. However, we strongly oppose any legislation that is not supported by evidence-led research, and that removes responsibility from families and communities by operating from an enforcement-based position. The way forward to overcoming disadvantage, improving outcomes and increasing the rates of Indigenous attendance and retention in schools is clear: the First Peoples must be empowered to take control of their lives, rather than being singled out by harsh penalties that threaten only to exacerbate the economic injustices that drive much of the disadvantage – particularly in remote communities.

Certainly, UnitingJustice supports the overarching principle of equality and Closing the Gap between Indigenous and non-Indigenous peoples. However, the seductive simplicity of many of the measures in the Stronger Futures legislation, including banning alcohol, increasing sentences for violations of bans, quarantining welfare payments and punishing parents by suspending their income support based on their child’s school attendance, shifts all responsibility for long-term systemic issues onto the First Peoples themselves, and yet fails to support or further the reconciliatory goals that must inspire interactions between Indigenous and non-Indigenous Australians.

The UN Committee on the Elimination of Racial Discrimination has called on parties to ICERD to

Ensure that members of Indigenous peoples have rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.¹²

UnitingJustice believes that the rushed nature of the Stronger Futures Consultations, including the short timeframe for organisations to prepare written responses to the proposed legislative changes, has distanced and disempowered Indigenous communities from the policy process. The overwhelming response from those who

¹² <http://www.unhchr.ch/tbs/doc.nsf/0/73984290dfea022b802565160056fe1c>

did have the opportunity to participate in the consultative processes was that the legislation was fundamentally flawed, highly punitive and overly-discriminatory. Yet, the legislation has passed through the Lower House without amendment and weeks before the Senate Inquiry into the bills has concluded. Consultations must be more than merely tokenistic exercises, with the voices of First Peoples recognised, heard and respected.

80. The Australian Government has established a Healing Foundation to provide services to address trauma in Aboriginal and Torres Strait Islander communities, with a strong focus on the unique needs of people who were forcibly removed from their families as children.

Both the UN Human Rights Committee and Committee on the Elimination of Racial Discrimination have made recommendations for the creation of a national compensation scheme for victims of the Stolen Generations.¹³ UnitingJustice notes with disappointment the lack of acknowledgement of these recommendations in the Exposure Draft, and calls on the Government to include specific plans to establish such a scheme in the National Human Rights Action Plan.

83. The Australian Government is working with States and Territories and Indigenous people to improve community safety and to address the over representation of Indigenous people in the criminal justice system, both as offenders and victims.

Despite this commitment, UnitingJustice is disappointed to see the lack of acknowledgement of the effectiveness of customary law for the First Peoples. Article 34 of the UN Declaration of the Rights of Indigenous Peoples states

Indigenous peoples have the right to their own legal systems and customs, as long as they accord with international human rights law.¹⁴

Customary law can help Indigenous communities exercise greater self-governance and take greater control over problems facing their communities. It should be seen by the Government as integral to attempts to develop and maintain functional, self-determining Indigenous communities. We call for the National Human Rights Action Plan to reinstate the customary law consideration to empower Indigenous communities and reduce the over-representation of Indigenous peoples in the criminal justice system.

¹³ UN Human Rights Committee (2009). 'Concluding Observations of the Human Rights Committee, Australia,' UN Doc. CCPR/C/AUS/CO/5, para. 15. And, Committee on the Elimination of Racial Discrimination (2010). 'Concluding Observations of the Committee on the Elimination of Racial Discrimination, Australia,' UN Doc. CERD/C/AUS/CO/15-17, para. 26.

¹⁴ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

The Human Rights Experience of Specific Groups in Australia: Women

100 – 111: Freedom from violence

UnitingJustice welcomes the commitment of the Australian Government to reducing the level and frequency of violence against women. However, we note that the Exposure Draft makes no reference to the effects of domestic violence on women in the workplace. While domestic violence against women rarely takes place in the workplace itself, there are important and serious consequences on workplaces and their employees, a fact endorsed by Elizabeth Broderick of the AHRC:

Almost one in three women who experience domestic and family violence are in the workforce, so there is no question that the issue of violence affects many of our workplaces... Violence has serious implications for individual women's short and long term financial security. Domestic and family violence can disrupt women's work and can cause women to incur a range of additional costs and debts... We must develop better workplace responses to domestic and family violence to ensure that women can stay attached to the workforce.¹⁵

Currently, there is no legislative framework that deals specifically with discrimination in the form of unfair or less favourable treatment of those who are victims of domestic violence, and existing workplace laws "fail to provide effective or specific redress for victims/survivors of domestic violence who are treated adversely on the basis of this violence."¹⁶ There is a compelling need for specific clauses in the National Human Rights Action Plan to capture the range of issues facing victims of domestic abuse, particularly when we consider that claims utilising existing anti-discrimination provisions that are designed to cover areas of life such as family responsibilities, are generally weak. This is clearly articulated by the AHRC when they noted

It may not always be possible for an employee to link adverse action or a dismissal which is in truth based on domestic violence to a ground of discrimination covered by the FWA. For example, an individual who is discriminated against because she or he requires time off work to attend court or to relocate to escape violence may be unable to make a claim under

¹⁵ Broderick, E. (2010), Speech to forum on domestic violence clauses in enterprise agreements, an Australian first at UNSW, 15 April 2010. Available at <http://www.hreoc.gov.au/>

¹⁶ Heffernan, A. & Matahaere, L. (2010), 'Domestic violence discrimination in the workplace: Is statutory protection necessary?' Our Work, Our Lives Conference 2010, Queensland Working Women's Service Inc.

any ground covered by the FWA.¹⁷

112 – 116: Gender equality in public life

It is commonly thought that developed nations such as Australia have moved beyond the gender equity issues that plagued workplaces of the past. A recent survey conducted by the Financial Services Institute of Australasia found that while 85% of female employees believe that there is a gender divide and that the negative effects are tangible, only 28% of male employees believe that there is an issue to be addressed.¹⁸ On its own, this is an alarming statistic; when a problem is not named, it cannot be addressed, and a quick glance at the statistics reveal that there are indeed a number of fundamental problems that require our urgent attention:

- women working full-time earn 83 cents for every dollar earned by a man;
- the average superannuation payout for women is one third of the payout for men;
- female executives earn 28% less than their male counterparts;
- women hold just eight per cent of Board Director positions;
- only two per cent of Chairs of Boards are women;
- women who face intersectional discrimination are particularly marginalised;
- the gender gap in pay has increased over the last five years, currently sitting at 17%;
- despite the fact that women comprise 64% of all higher education graduates, their starting salaries and lifelong earnings continue to fall behind that of men; and
- women have less chance of being identified as potential managers or executives than men, and are therefore not offered the same development opportunities as their male colleagues from graduate entry level.

While more and more women are entering the workforce, they are doing so “in the context of a decline in the social power of labour.”¹⁹ This means two things for women: that they are more likely to enter into lower paid positions without the security of permanent hours, and – for those with family or carer responsibilities – their increased participation is not balanced by a reduction in the amount of household and childcare duties still attributed to them. With women increasingly

¹⁷ Australian Human Rights Commission, Submission CFV 48, 21 April 2011.

¹⁸ Fox, C. (2010). “Mythbusters: Seven myths about women and work,” Financial Services Institute of Australasia, Sydney.

¹⁹ Moghadam, V.M. (1999). “Gender and Globalisation: Female Labour and Women’s Mobilisation,” *Journal of World-Systems Research*, 5(2): 367 – 388.

and disproportionately represented in casual and temporary employment, the “historically disadvantaged position of women” is simply exacerbated.²⁰ Additionally, “pre-existing inequalities, which include under representation of women at all levels of economic decision making,”²¹ make it exceedingly difficult for women to obtain the type and level of agency required to overcome the systemic discrimination they face.

Recent research reveals that gender inequity as it relates to income is not only a significant feature of all developed economies, but that the mode of employment undertaken by women bears a direct correlation to this pay gap.²² Women, more likely to undertake casual or part-time employment (often due to family commitments related to caring for children), are negatively affected not only by way of a lower hourly rate, but also a reduced superannuation payout as a result of career breaks. In a recent submission to the United Nations Special Representative for Business and Human Rights, the Global Unions IMF and IUF argued that casual employment is an obstacle to the human rights of women:

More and more workers – most of whom are women – find themselves in precarious jobs where they have no right to join a union, let alone to bargain collectively with their employer. Some are formally excluded because basic rights are denied in law. Others have rights on paper, but no rights in fact because laws are not enforced. And others are too afraid to exercise their rights because they could lose their jobs at any minute. As a result, millions of workers are effectively excluded from the reach of ILO Conventions.²³

For too long, there has been a pervasive belief that a woman’s choice to have and raise a family is the most significant and concrete difference between men and women in the workplace. It is assumed that women voluntarily elect to undertake part-time or casual work to enable them the high level of flexibility required to balance work inside and outside of the home. However, we believe that the difficulties faced by women with children is both attitudinal and systemic. Women face gendered discrimination as soon as they graduate from higher educational settings – discrimination that continues well after women have returned to the workplace after having a career break.

Australia has recently implemented several key policy directives which were designed to improve the working lives of women and to overcome some of the

²⁰ International Labour Organisation (ILO), *Global Employment Trends*, 2010.

²¹ International Trade Union Federation (2011). “Living with Economic Insecurity: Women in Precarious Work,” ITUC, Sydney.

²² International Trade Union Federation (2010). “Gender (in)equality in the labour market: An overview of global trends and developments,” ITUC, Sydney.

²³ “Precarious Work: Undermining Human Rights,” International Metalworkers Federation (IMF) submission to the UN Special Representative of the Secretary General for Business and Human Rights, May 2010.

structural disadvantage that persists in the workforce. The Paid Parental Leave Act, the Fair Work Act and the National Employment Standards that accompanied this legislation, reform of the Sex Discrimination Act, and the ratification of the ILO Convention on Part-Time Work, are all recent examples of positive legislative change. However, even with these new protections in place, systemic discrimination against women continues. Elizabeth Broderick, the Sex Discrimination Commissioner, while lauding the opportunities that are available to women today, argued that gender inequality “lingers malodourously in the workplace” and noted that “this idea that the problem of gender inequality can be traced to the institutional arrangements of organisations is one which has been put forward persuasively for many years, but I think the term ‘gender asbestos’ captures the issue well.”²⁴ Broderick here was drawing on the work of Wittenberg-Cox, who coined the phrase ‘gender asbestos’ – discrimination against women that is “hidden in the walls, cultures and mindsets of many organisations.”²⁵

UnitingJustice is pleased to see the inclusion of key gender equality indicators for organisations with more than 100 employees, however we would recommend that the National Human Rights Action Plan specify guidelines for how organisations can achieve these measures, and what consequences will occur if the targets are not met.

The Human Rights Experience of Specific Groups in Australia: Children

121. The Australian Government will explore options for establishing a new National Children’s Commissioner.

UnitingJustice is disappointed to see that the Government is still exploring options for the creation of the position of National Children’s Commissioner, instead of committing to and funding the creation of this role.

Currently, the Minister for Immigration is the legal guardian of all unaccompanied minors seeking asylum, which creates a clear conflict of interest with the Minister representing both the detaining authority and the visa decision-maker. The current situation must be amended to ensure that unaccompanied minors seeking asylum have a legal guardian whose primary consideration is their best interests. UnitingJustice believes that the introduction of an independent Commissioner for Children and Young People could achieve this goal.

²⁴ Speech given by Elizabeth Broderick, “Our Work, Our Lives: 3rd National Conference on Women and Industrial Relations.” Darwin, August 2010.

²⁵ Wittenberg-Cox, A. (2010). “Why focusing on the gender gap misses the point,” available at http://blogs.hbr.org/cs/2010/04/why_focusing_on_the_gender_pay.html

A number of key agencies have recommended the need for a national Children's Commissioner and the role was an endorsed action of the Council of Australian Governments (COAG) in their 2009 National Framework for Protecting Australia's Children.²⁶ UnitingJustice recommends that the National Human Rights Action Plan specifies that the functions and powers of the Commissioner apply both to all young people who are Australian citizens and residents, as well as all young people in Australia (including external territories), regardless of their residency or citizenship status.

The Human Rights Experience of Specific Groups in Australia: Refugees, Asylum Seekers, Migrants and People From Culturally and Linguistically Diverse Backgrounds

192. The Australian Government will continue to ensure that detention is not indefinite or otherwise arbitrary.

195. The Australian Government will continue to move more people in immigration detention into community-based detention arrangements, including, as a priority, all children, (including unaccompanied children) and families following appropriate risk, security and health assessments.

196. The Australian Government will continue to resource a dedicated Children's Unit to address complex policy issues relating to unaccompanied minors.

While the passing of the Migration Act (Complementary Protection) Bill 2011 was a positive step in the implementation of Australia's non-refoulement obligations, UnitingJustice remains concerned for the rights of those who are stateless, and yet whose claims for refugee status have been denied. Statelessness is not included in the amended Migration Act as a complementary category. However, Australia's obligations are clearly outlined in the two international human rights treaties to which we are a signatory: The 1954 Convention Relating to the Status of Stateless Persons and The 1961 Convention on the Reduction of Statelessness. UnitingJustice has long called for the introduction of a visa category for stateless persons under Australian law, and we reiterate that position here. To avoid incidences of vulnerable men, women and children languishing indefinitely in immigration detention, the National Human Rights Action Plan should include specific protections for stateless persons.

While we welcome the Government's commitment to ensuring that detention is not

²⁶ See http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/child_protection_framework.pdf for a copy of the strategies and actions outlined in the framework

indefinite, we are concerned that this is not enshrined in Australian law. The central pillar of our immigration policy remains the Migration Act 1958 (Cth), which explicitly permits mandatory immigration detention. A recent report from Amnesty International reveals that many vulnerable asylum seekers are spending extensive period of time in remote detention centres, and are experiencing physical, psychological and emotional trauma as a direct result of this incarceration.²⁷ The report noted the following lengths of detention in immigration centres in Australia:

- Northwest Point IDC, Christmas Island: longest time in detention was over 800 days;
- Curtin IDC, Western Australia: longest time in detention was 831 days;
- Perth IDC, Western Australia: longest time in detention was over 12 months;
- Phosphate Hill APOD, Christmas Island: longest time in detention was 4 months (this is a facility hosting unaccompanied minors);
- Northern IDC, Darwin: longest time in detention was 700 days;
- Wickham Points IDC, Darwin: longest time in detention was 3 months;
- Airport Lodge APOD 1/2, Darwin: longest time in detention was 314 days (again for an unaccompanied minor); and
- Airport Lodge APOD 3, Darwin: longest time in detention was 745 days.

These figures reveal the disturbing truth about the length of time that asylum seekers are spending in detention facilities in Australia. They stand in stark contrast to the commitments and assurances offered by the Government that children will not be detained, and that adults will only be detained for short periods of time while health and security checks are being undertaken. UnitingJustice calls on the Government to include tighter regulatory checks in the National Human Rights Action Plan to ensure that its own immigration policies are being adhered to.

²⁷ <http://www.amnesty.org.au/images/uploads/news/Amnesty-International-Australia-DetentionFacilitiesVisit-2012-FINAL.pdf>