



Note No. 10/2012

The Australian Permanent Mission to the United Nations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and the Human Rights Committee, and has the honour to refer to the letter from the Special Rapporteur for Follow-Up on Concluding Observations of 19 October 2011.

The Australian Government has the honour to enclose its response to the Special Rapporteur's request for additional and more specific information with respect to Australia's response to the issues identified in paragraphs 11, 14 and 17 of its Concluding Observations concerning Australia's fifth report under the International Covenant on Civil and Political Rights.

The Australian Permanent Mission avails itself of the opportunity to renew to the Office of the High Commissioner for Human Rights and the Human Rights Committee, the assurances of its highest consideration.



Geneva

3 February 2012

Response of the Australian Government to Request for Further Information on Concluding Observations of the United Nations Human Rights Committee

January 2012

In its Concluding Observations concerning Australia's fifth report under the International Covenant on Civil and Political Rights (the ICCPR), issued in April 2009, the Human Rights Committee requested that Australia provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 11, 14, 17 and 23. The Australian Government submitted its written response to this request on 17 December 2010.

On 19 October 2011, the Committee wrote to Australia requesting additional and more specific information with respect to Australia's response to the issues identified in paragraphs 11, 14 and 17 of its Concluding Observations.

The Australian Government is pleased to provide to the Committee the following information in response to the Committee's latest request. The Government also notes the date of receipt of Australia's initial written response was 17 December 2010, rather than 1 April 2010 as the Committee's letter states.

Paragraph 11 – Counter-Terrorism Measures

In paragraph 11, the Committee expressed concern that some provisions of the *Anti-Terrorism Act (No. 2) 2005* and other counter-terrorism measures adopted by the State party appear to be incompatible with the ICCPR. The Australian Government gave careful consideration to the issues raised by the Committee in its initial written response.

The Committee now requests additional and more specific information on:

The progresses realized with regard to the review of the 2005 counter-terrorist legislation; and the interpretation and application of the expression "for the avoidance of doubt" of article 34ZP of the ASIO Act, under which a person may be questioned in the absence of a lawyer.

The Committee also considers that:

Its recommendations with regard to the vagueness of the definition of terrorist act, and to the possibility to detain a person in conditions of secrecy – up to eight days and without a warrant – have not been implemented.

Response

Review of the 2005 counter-terrorism legislation

In Australia's initial response to the Committee's Concluding Observations in December 2010, the Government indicated that Australia's counter-terrorism laws have been extensively reviewed. The Government is pleased to provide the following further updates.

On 21 April 2011, Mr Bret Walker SC was appointed as Australia's first Independent National Security Legislation Monitor. The Monitor will review the operation, effectiveness and implications of Australia's counter-terrorism legislation on an annual basis to ensure the legislation is operating effectively and appropriately.

Australia's initial response noted that the laws would also be reviewed by the Council of Australian Governments (COAG – the peak intergovernmental forum in Australia, comprising the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association).

The COAG Review of Counter-Terrorism Laws will commence as soon as the arrangements for the Review, including the funding, terms of reference and membership of the Review Committee, have been agreed through COAG. The Review was due to commence in December 2010.

Commencement of the Review was delayed in the first half of 2011 while the Government considered the intersection of the Review with the role of the Independent National Security Legislation Monitor.

Definition of terrorist act

The Australian Government does not consider that the definition of terrorist act is vague. The Government provided extensive information in its initial response to the Committee on the particular elements of the definition of terrorist act. This included the relevant intention that must be proven and the limitations built into the definition expressly excluding certain acts from the scope of the definition.

The Government notes the role of the recently appointed Independent National Security Legislation Monitor will involve regular review of the operation of counter terrorism laws. This may include reviewing the definition of terrorist act in the Criminal Code.

ASIO powers relating to terrorism offences – detention of persons in conditions of secrecy

The Committee's latest request queries Australia's implementation of its recommendation 'with regard to ... the possibility to detain a person in conditions of secrecy – up to eight days and without a warrant'. The Government emphasises that a person may only be detained by ASIO for the purpose of questioning following the issuing of a warrant. Subdivision C of Division 3, Part III of the *Australian Security Intelligence Organisation Act 1979 (the ASIO Act)* sets out the framework for issuing questioning and detention warrants for the investigation of a terrorism offence.

Questioning and detention warrants are only available in a limited set of circumstances. That is, where the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence and as a matter of last resort. Further, the warrant may only authorise the subject to be detained where there are reasonable grounds to believe that the person will fail to appear for questioning, will alert a person involved in a terrorism offence that is being investigated, or will destroy or alter a record or thing required to be produced under the warrant.

Limitations on the person subject to a questioning and detention warrant from contacting people and disclosing information about the warrant are not absolute. The restrictions that do apply are necessary and tailored to protect national security. For example, the Prescribed Authority (an independent person with judicial experience who presides over the questioning) may permit the person subject to the warrant to contact an identified person and to disclose information, other than certain specified information. The specified information may be restricted from disclosure for national security reasons. This is necessary to prevent, for example, the person subject to the warrant from tipping off an accomplice. Further, in the case that a subsequent questioning and detention warrant is sought, stringent requirements must be met before a person can be subject to a new warrant for periods of seven days.

The Government is not currently considering abrogation of the current ASIO questioning and detention powers. The Government re-iterates the information provided in its initial response to the Committee, specifically that these powers are limited by extensive restrictions and safeguards.

ASIO powers relating to terrorism offences – Interpretation of section 34ZP of the ASIO Act

In the case that a person is detained under a questioning and detention warrant, section 34ZO of the ASIO Act allows the Prescribed Authority to prevent the person from contacting a particular lawyer of the person's choice. The Prescribed Authority may do so only where he or she is satisfied that there is a risk that a person involved in a terrorism offence may be alerted about the investigation, or that a record or thing that the person is required to produce under the warrant may be destroyed, damaged or altered. Section 34ZO does not prevent a person from contacting another lawyer.

Section 34ZP of the ASIO Act provides that, to avoid doubt, a person may be questioned under the warrant in the absence of a lawyer of the person's choice. The expression 'for the avoidance of doubt' is to be interpreted literally, that is, to provide clarity on the purpose of Division 3 of the ASIO Act. The purpose of section 34ZP is to ensure that the questioning can proceed notwithstanding the situation where, for example, a person is prevented from contacting a particular lawyer and the person refuses to contact any other lawyer.

Paragraph 14 – Northern Territory Emergency Response

In paragraph 14, the Committee noted that it considered certain measures under the Northern Territory Emergency Response (NTER) adopted by Australia in response to the findings of the report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory (*Little Children are Sacred* of 2007) are inconsistent with Australia's obligations under the ICCPR.

The Committee requests additional and more specific information on:

The measures taken to guarantee that the application of the restrictions, expropriations and law enforcement powers under the NTER are not discriminatory and culturally ill-adapted.

Response

The Australian Government's initial response to the Concluding Observations of the Committee submitted in December 2010 provided a comprehensive statement of actions taken to reform the NTER. It highlighted the passage of legislation in 2010 to restore the operation of the *Racial Discrimination Act 1975* (RDA) to the NTER and to redesign a number of measures to improve them and make them sustainable in the long term.

The Government is confident that the provisions that are now in place are consistent with the RDA, either because they are inherently non-discriminatory (as in the case of the new income management scheme that was introduced across the Northern Territory in July 2010) or are properly characterised as special measures for the purposes of the RDA.

The reinstatement of the RDA in relation to the NTER took effect from 31 December 2010. Although people now have the right to take legal action under the RDA if they consider any of the provisions in the NTER are discriminatory, no such actions have been initiated to date.

Under existing legislation and funding arrangements most NTER measures are due to cease in mid-2012. On 22 June 2011, the Australian Government released the Stronger Futures in the Northern Territory discussion paper as the starting point for consulting with Aboriginal people in the Northern Territory to seek their views on future approaches to addressing the continuing

unacceptably high level of disadvantage they experience. Extensive consultations were undertaken across the Northern Territory from late June to August 2011.

On 23 November 2011, the Government announced its legislative response to the issues that people identified as the most urgent through the Stronger Futures in the Northern Territory consultations. The legislation will be subject to public scrutiny through a Parliamentary Committee process before being debated by the Parliament in the early part of 2012.

The legislation, if passed by the Parliament, will repeal in full the *Northern Territory National Emergency Response Act 2007* and establish a new framework for moving forward in a spirit of genuine partnership with Aboriginal people in the Northern Territory. The legislation includes specific provisions aimed at ensuring that children attend school so they can get a good education, and which address the serious harm that is being caused by alcohol abuse. It also continues a number of measures that have been effective in helping to make communities safer, in particular for women and children.

The five-year leases over Aboriginal land that were compulsorily acquired under the initial NTER legislation will be ended no later than August 2012. The approach currently being pursued by the Australian and Northern Territory Governments is to negotiate voluntary long term leases with Aboriginal land owners to ensure secure tenure arrangements for government investment in housing and infrastructure on Aboriginal land. This approach will be maintained in the future.

Paragraph 17 – Violence Against Women

In paragraph 17, the Committee noted with concern that, despite the efforts recently undertaken by Australia to address violence against women, including its zero tolerance approach and its intention to conduct a National Survey on Community Attitudes to Violence Against Women, disturbing levels of domestic violence persist in Australia.

The Committee requests updated information on:

The results and lessons learnt from the zero tolerance policy to address violence against women.

Response

Addressing the high levels of violence against women in Australia will be an on-going process. National surveys on attitudes towards violence in the community will be conducted by the Australian Government on a rolling basis, starting in 2012. The Government will report on the outcomes of these surveys in future communications with the Committee. The Government is also pleased to inform the Committee of the release of the National Plan to Reduce Violence against Women and their Children 2010 – 2022 (the National Plan). The National Plan includes measures directed at

building capabilities and knowledge to assist in measuring outcomes and informing future strategies to prevent violence against women.

The National Plan to Reduce Violence against Women and their Children 2010-2022

On 15 February 2011, the Australian Government announced the National Plan, a 12-year strategy endorsed by the Federal Government and all State and Territory Governments. The National Plan focuses on two main types of violence: domestic and family violence and sexual assault. These crimes are gendered crimes – that is, they have an unequal impact on women.

The National Plan can be found online at:

[National Plan to Reduce Violence against Women and their Children 2010-2022](#)

The National Plan represents the first time that all of the States and Territories around Australia have joined with the Australian Government to work together to prevent and reduce the incidence of violence against women. It has a strong focus on primary prevention, working to improve the service system, building the evidence base and holding perpetrators to account. The National Plan also seeks to enhance the relationship between government and the non-government sector, recognising that the aims of the National Plan require action across the community.

The National Plan will be implemented through a series of three year action plans, focusing of strategic priorities for government. Implementation will be supported by the National Plan Implementation Panel, which will include non-government representatives.

The outcomes identified for the National Plan are:

Outcome 1 - Communities are safe and free from violence

Outcome 2 – Relationships are respectful

Outcome 3 – Indigenous communities are strengthened

Outcome 4 – Services meet the needs of women and their children experiencing violence

Outcome 5 – Justice responses are effective, and

Outcome 6 – Perpetrators stop their violence and are held to account.

The inclusion of the outcome focusing on Indigenous communities recognises the need for extra effort to assist and support Indigenous women.

A supporting National Implementation Plan will set out how the Australian Government and the States and Territories will work together on the implementation of the national initiatives. In addition, all States and Territories will develop implementation plans to identify those actions which will be continued or implemented within their jurisdiction. This recognises the different circumstances and priorities within each jurisdiction.

Implementation of the National Plan will be overseen by the Select Council on Women's Issues, reporting to COAG. This Ministerial council brings together Federal, State and Territory Ministers responsible for women's issues. Due to the cross portfolio nature of issues relating to violence against women, other ministerial councils also play a significant role for example in relation to law and justice, housing and community services.

The Australian Government, since 2009, has committed over A\$86 million to fund initiatives under the National Plan:

- A\$12.5 million for a National telephone and online Counselling Service (1800 RESPECT), and a further \$8.8 million to provide support for frontline workers
- A\$9.1 million on Respectful Relationships Education
- A\$17 million on a national Social Marketing Campaign – The Line
- A\$3.75 million for Community Action Grants
- A\$3 million to support research on perpetrator programs, and a further \$4.6 million for a once-off reward/incentive payment to be paid to jurisdictions in 2014
- A\$4.8 million on a series of reform projects directed at improving service delivery to women affected by domestic and family violence and their children
- A\$0.75 million to expand counselling services for male victims of domestic violence through Mensline
- A\$6.9 million for a new National Centre of Excellence, and
- A\$14.9 million to conduct two national surveys on violence in the community on a four year cycle.

In addition, in the 2011-12 budget the Government committed \$8.5 million over four years from 2011-12 to 2014-15 to expand and reform the support available for training of Indigenous health, health and allied health workers to help them recognise domestic violence and be more effective in referring women to support services.

Building the evidence base

One of the key initiatives under the National Plan is the development of a National Centre of Excellence (NCE). This centre will develop and administer a national research agenda in the area of violence against women which reflects the research priorities of governments and the non-government sector, and will lead to the significant advancement of capabilities and knowledge of violence against women and their children. The centre is expected to be established in 2012.

A major contribution to building the evidence base is two national surveys – The National Community Attitudes towards Violence Against Women Survey (NCAS) and the Personal Safety Survey (PSS).

The key objective of the NCAS is to measure Australians' attitudes towards violence against women and gender equality. The 2009 survey established a baseline and future surveys will help to improve our understanding of the factors that influence community attitudes and to inform the design and implementation of future strategies to prevent violence against women.

Over 10,000 men and women were asked to participate in the NCAS conducted from February to April 2009. There were also components that invited the participation of Indigenous Australians and culturally and linguistically diverse communities. The design of these components was supported by an Advisory Group to ensure the research approach was methodologically, ethically and culturally sound.

The survey found that most people in the community have a broad understanding of domestic and sexual violence and its impacts, and do not condone it. The survey also found that despite significant and positive shifts in the general community's attitudes and beliefs towards violence against women, attitudes that condone, justify or excuse violence against women persist. The full results of the 2009 survey can be found at:

[National Community Attitudes towards Violence Against Women Survey 2009.](#)

The PSS provides data on people's safety at home and in the community and, in particular, on the nature and extent of violence against men and women in Australia. The focus of the survey is on people who experienced violence aged 18 years and over (as opposed to violence experienced by children or other specific groups known to be at risk of violence).

Between August and December 2005, the PSS collected information about experiences of physical and sexual violence through personal interviews with approximately 16,500 people across Australia. The survey collected information about experiences of violence in which a male or female perpetrator was involved. As well as examining incidents of violence, the survey collected information on abuse, harassment, and people's feelings of safety within the home and the community. The survey builds an evidence base for the development of policy on the prevention of domestic and sexual violence.

The full results of the 2005 survey can be found at: [The Personal Safety Survey.](#)

These surveys are to be conducted on a four-year rolling cycle. The next NCAS will be in 2014. The next PSS will be conducted in 2012 reporting in 2013.