

Australian Human Rights Commission
Level 3, 175 Pitt Street
Sydney NSW 2000
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Re: Submission into Free and Equal: An Australian conversation on human rights

Dear Australian Human Rights Commission,

Positive Life NSW (Positive Life) welcomes the opportunity to provide a submission into the Free and Equal: An Australian conversation on human rights (the Conversation).

Positive Life is the state-wide peer based non-profit organisation that speaks for and on behalf of people living with and affected by HIV in NSW. We provide leadership and advocacy in advancing the human rights and quality of life of all people living with HIV (PLHIV), and to change systems and practices that discriminate against PLHIV, our friends, family and carers in NSW.

Background

At Positive Life, we believe that the Australian government can and should support the protection of all human rights, including freedom of expression, conscience, religion and belief, and freedom from discrimination. There are some existing federal discrimination laws which protect race, sex, disability and age, as well as state laws which protect against discrimination for certain groups.

In consideration of the questions posed by the Australian Human Rights Commission (the Commission) in the Conversation about human rights in Australia, our main areas of focus are detailed below.

How human rights should be protected in Australia

Australia currently has an inadequate legal assortment of human rights protections that do not comprehensively put into action the international obligations agreed to by the federal government. As the aim of human rights is to safeguard every individual's dignity and ensure fairness of treatment under the law and within society, we need a robust system that prevents mistreatment and violations of essential human rights from occurring in the first place. Under our current system, Australians are unable to access enforceable remedies when their human rights have been breached, and when the damage of these breaches have already occurred, been ignored and dismissed.

Australia has agreed to the 'international Bill of Rights' along with other governments world-wide. The Commission's Conversation issues paper outlines that: "the Universal Declaration of Human Rights states that everyone has duties to the community, and every individual and every organ of society...shall strive by teaching and education to promote respect for...rights and freedoms. This means that not only the government, but also businesses, community organisations, providers of education, health, employment and other social services, police and law enforcement agencies, civil society, and individuals share the responsibility of promoting and respecting human rights."¹ Notably, Australia, though signed onto the Universal Declaration of Human Rights, is the only common law

¹ Australian Human Rights Commission, 2019, 'Free and Equal, An Australian Conversation on Human Rights, Issues Paper'

legal system in the world without a constitutional Bill of Rights or a national Human Rights Act as a method of domestically implementing of these voluntary commitments.²

We consider it appalling that the human rights system in Australia does not require our jurisdictional governments to make decisions with human rights in mind – political or economic justifications are easily able to supersede human rights with no means to hold these decisions accountable. Any complaints of human rights violations made to the Commission can result in a non-binding report being made, which leads up ineffectual remedies or justice. Similarly, once a complaint has been made to the Commission and a further complaint has been made to a relevant international body, such as the United Nations Human Rights Committee relating to breaches of the International Covenant on Civil and Political Rights (ICCPR), decisions are not binding and can and have been ignored.

We agree with the Commission that a Human Rights Act should be developed and implemented on a federal level in Australia, for a variety of reasons, including but not limited to: harmonising and expanding current inadequate human rights protections within Australia; framing protections in the positive rather than negative; requiring consideration of human rights in a proactive way in law and policy development; providing an avenue for balancing human rights when in conflict with other human rights; setting a culture of consideration of equality, fairness and human rights within the whole of government with flow-on effects to the rest of society; and improving social, health and economic situations of Australians.³

Positive Life believes that the development of a comprehensive, modern, adaptable and just Human Rights Act is vital to maintaining a fair, safe and equitable quality of life for all Australians, particularly individuals who are part of marginalised or intersectionally oppressed populations within Australia, such as PLHIV, Aboriginal and/or Torres Strait Islander people, people from diverse racial and cultural backgrounds, people who identify as LGBTQIA+, sex workers, people who have experienced sexual and/or domestic violence, and people who inject drugs, among others.

In addition to the development of a Human Rights Act, we agree with the Commission that the Australian Constitution must be amended to recognise Indigenous Australians, remove racially discriminatory provisions, and include protections of equal treatment and non-discrimination. Full, representative, and not-tokenistic participation of Aboriginal and/or Torres Strait Islander peoples must be enshrined constitutionally and in all levels of parliamentary decision making where the decisions affect their interests. A framework for negotiations with Indigenous Australians must be developed and adhered to, to recognise and address the structural inequalities brought about by colonisation and the consequences of past and ongoing injustices, through truth and reconciliation processes.⁴

We also agree with the Commission, as they have outlined in detail in the Positive Human Rights Reform Discussion Paper that “increased funding and support for advocacy, community and legal organisations that work to protect and promote human rights would help support public understanding of human rights, as well as greater inclusion in school curricula, and a requirement

² Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

³ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

⁴ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

that relevant employers educate their employees about human rights.”⁵As the first step to working on a problem is knowing and acknowledging that we have a problem, we cannot hope to make inroads into human rights issues on a community level without broader education and awareness of the issues. This education and public awareness raising will be most effective through the primary, secondary and tertiary school systems, as well as community-based organisations who already have effective links into various communities and a track record of successful community development programs. This component of human rights reform is pivotal to an efficacious implementation and cannot be possible without dedicated extra funding.

Furthermore, we assert alongside the Commission that the law should be extended such that Australian businesses are required to conduct human rights due diligence to identify, prevent, mitigate and account for any adverse human rights impacts, in alignment with the United Nations Guiding Principles on Business and Human Rights.⁶ This is particularly pertinent when the government is continuing to allow and encourage corporations to conduct business in such a way that is threatening the human rights, health, safety and dignity of all Australians through actively contributing to the climate change crisis against scientific consensus. Further concerns relating to this will be discussed below.

How the Australian government is failing to protect human rights, and what actions are needed to ensure that the government meets its obligation to fulfil human rights

Human rights are universal, and do not depend on where we are born, our gender, socio-economic background, race, health-status, sexual orientation or any other characteristics – they reflect dignity, freedom and equality. Some economic, social and cultural human rights include right to physical and mental health; right to social security; right to adequate standard of living; and right to education, for example. Some civil and political human rights include right to life; right to asylum; freedom of movement and liberty; freedom of opinion and expression; and right to privacy, for example.

While we do have some legal protections against human rights breaches, these are primarily in the form of discrimination laws in the absence of federal human rights laws. These laws are dispute-focused, retroactive, complex, unequal, and not comprehensive.

Positive Life believes that human rights should be protected under the law, with remedies available and accessible when breaches occur, and mechanisms to enable the meaningful participation of affected groups in law and policy making. The government is failing its obligation to: respect human rights by ensuring their own actions do not breach human rights. By way of example, the right to an equal and adequate standard of living is being contravened by disparities in access to services between urban, regional and remote areas, with this poised to get worse for particular groups of people, such as ageing PLHIV who are being priced out of cities in their retirement and are moving to regional or rural centres out of necessity and finding access to quality health and social services extremely lacking. This also means that certain groups of people in Australia who predominantly live in regional or rural areas, such as Aboriginal and/or Torres Strait Islander peoples experience worse economic, health and social determinants of health outcomes across many indicators.

Additionally, community groups, health agencies, research bodies, and not for profit organisations are continually ignored and vilified into silence by the government in their attempts to meaningfully participate in policy and law making. From mandatory testing laws implemented by governments in

⁵ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

⁶ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

Southern Australia, Western Australia and Northern Australia, as well as ongoing pushes for this legislation in New South Wales by the Police Commission, against tenants of bodily autonomy and self-determination and best practice evidence-based research to the contrary,^{7, 8} to the federal government refusing to declare a climate emergency and commit to meaningful action on climate change against the overwhelming evidence to the contrary and ongoing advocacy efforts of multitudes of individuals and organisations in Australia and worldwide on behalf of all human rights.⁹

The human right to adequate standard of living, right to be free from discrimination (including on the basis of HIV or other blood-borne virus (BBV) status), the right to freedom of peaceful assembly and to association with others, the right to be treated with humanity and dignity when imprisoned, and the right to life is being contravened and threatened by the government due to their actions and inactions, and ineffective and contradictory policies. As demonstrated by a government spending more than \$400,000 per asylum seeker in offshore detention costs (to a total of \$826.1 million in 2014-15) when their own data shows onshore alternatives are much more cost effective, while simultaneously cutting \$140,000 of annual funding from the Refugee Council of Australia;¹⁰ the Liberal National Party of Queensland banning activists from using libraries and other taxpayer funded council facilities to plan protests;¹¹ and the consistent government inaction to remedy the vastly disproportionate Indigenous incarceration rates (Aboriginal and Torres Strait Islander men are 14.7 times more likely to be imprisoned than non-Indigenous men, and Aboriginal and Torres Strait Islander women are 21.2 times more likely to be imprisoned than non-Indigenous women¹²) and mistreatment including deaths in Australia.

The government is failing its obligation to: protect human rights by enacting laws that prevent discrimination and provide remedies for breaches. Unintentional HIV transmission is still criminalised in some Australian jurisdictions, which has been shown to undermine public health responses, contribute to further stigmatisation of PLHIV, and discourage key populations from testing and treatment.¹³ Criminalising PLHIV is the government actively promoting discrimination based on outdated models of belief and stigma, is inconsistent with UNAIDS policy guidance, and does the opposite of protect people's human rights. In some states it is also a criminal offence to be an HIV-positive sex worker, even though there are no known cases of an Australian sex worker transmitting HIV through their work. Evidence-based research shows that decriminalisation is the most effective approach in removing barriers and enhancing access to testing, treatment and services for BBVs and

⁷ Public Health England, 'Guidance on management of potential exposure to blood-borne viruses in emergency workers: For occupational health service providers and frontline staff', (2019), accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835888/Guidance_on_management_of_potential_exposure_to_blood_2.pdf

⁸ Australian Federation of AIDS Organisations, 'Spitting and Mandatory Testing for HIV and Other Blood Borne Viruses', (2015), accessible at: https://www.afao.org.au/wp-content/uploads/2017/02/background_briefing_mandatory_testing_for_spitting_October_2015.pdf

⁹ The Guardian, 'Australia wasted decades in climate denial – and must break free of the mire of misinformation', (2019), accessible at: https://www.theguardian.com/environment/2019/oct/16/australia-wasted-decades-in-climate-denial-and-must-break-free-of-the-mire-of-misinformation?CMP=Share_iOSApp_Other

¹⁰ The Conversation, 'Penny wise, pound foolish: how to really save money on refugees', (2014), accessible at: <https://theconversation.com/penny-wise-pound-foolish-how-to-really-save-money-on-refugees-27270>

¹¹ Brisbane Times, 'Brisbane City Council bans Extinction Rebellion from libraries', (2019), accessible at: <https://www.brisbanetimes.com.au/national/queensland/brisbane-city-council-bans-extinction-rebellion-from-libraries-20191015-p530xv.html>

¹² The Guardian, 'Indigenous incarceration is a national tragedy – and both left and right need to solve it', (2018), accessible at: <https://www.theguardian.com/australia-news/commentisfree/2018/oct/18/indigenous-incarceration-is-a-national-tragedy-and-both-left-and-right-need-to-solve-it>

¹³ Australian Federation of AIDS Organisations, 'Application of Australian Criminal Laws in Cases of HIV Sexual Transmission and Exposure', (2015), accessible at: https://www.afao.org.au/wp-content/uploads/2017/02/background-briefing-criminalisation_February-2015.pdf

STIs for sex workers,¹⁴ as well as providing an environment most conducive to human rights, industrial rights, and good health.¹⁵

There are also current draft Religious Discrimination Bills that aim to and will effectively override existing protections under state or federal laws and will not translate to positive outcomes and protections for all Australians equally. To achieve the objective of protecting all human rights equally, any legislation changes must stringently ensure that discrimination protections do not provide any avenue for counter-discrimination, such as discrimination against various groups of Australians including PLHIV, LGBTQIA+ people, people with disability, women, and people from diverse racial and cultural backgrounds under the guise of protecting religious freedoms. Positive Life believes that the Religious Discrimination Bills package is conceptually flawed, and resources instead should be dedicated to developing a Human Rights Act¹⁶, the strengthening of current anti-discrimination legislation, or the development of an Australian Charter of Human Rights.¹⁷

The government is failing its obligation to: fulfil positive actions to advance human rights by providing programs that offer access to basic social services such as health care, free education for children, and income support. The Commission states that in Australia: “there are significant inequalities in the enjoyment of economic benefits. It is reported, for example, that there is a considerable gap between the richest and poorest – the top 20% of the population earn more than five times as much as the bottom 20%. While Australia ranks 6th out of the 38 members of the OECD for household income, we also rank 21st for social inequality, indicating that there is a wide gap in social conditions experienced based on economic or social status. Economic, social and cultural rights (such as housing, education and health) are most usually implemented through policy or services. Legislation that underpins these, such as for Medicare, includes a guarantee of equal access for all Australians.”¹⁸

The provision and delivery of welfare programs and social services should take into consideration not only the human rights of all individuals to an adequate standard of living, to social security and to health, but also the equity with which these human rights are afforded in the Australian context. The economic and social inequality in present day Australia is an astounding testament to the government’s unwillingness to penalise and correct large scale tax avoidance by corporations and remedy loopholes in tax and auditing legislation, leaving significant holes in government revenue.¹⁹ Whilst numerous multinational, billion-dollar corporations and religious institutions continue to pay zero tax year on year in Australia, Newstart hasn’t increased in real terms since 1994 due to being indexed to prices rather than wages while living standards are dominated by wages, and wages grow faster than prices over time. While the aged care pension has doubled in real terms since 2000, Newstart has barely moved. Newstart is currently \$272.90 for a single person each week, the equivalent of \$38.99 per day. Even when taking into consideration the maximum rent assistance and the energy supplement, a single person with no children only has around \$49.24 per day to live on. For an Australian under 22 years of age, that figure becomes \$41.97 per day including rent

¹⁴ Scarlett Alliance, ‘AIVL & Scarlet Alliance Joint Media Release: Custodial settings and decriminalisation of sex work feature in new national BBV and STI strategies’, (2018), accessible at:

<http://www.scarletalliance.org.au/media/Joint%20Scarlet%20Alliance%20AIVL%20Joint%20Media%20Release>

¹⁵ Australian Federation of AIDS Organisations, ‘HIV and the Law’, (2019), accessible at: <https://www.afao.org.au/about-hiv/hiv-and-the-law/>

¹⁶ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: A model for positive human rights reform in Australia’

¹⁷ National Human Rights Consultation Committee, “National Human Rights Consultation Report”, (2009), accessible at <http://pandora.nla.gov.au/pan/94610/20100324-0000/www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.html>

¹⁸ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Issues Paper’

¹⁹ Michael West, ‘Black holes, high-rises and the Meatloaf Principle: Australia’s top audit fails’, (2019), accessible at: <https://www.michaelwest.com.au/black-holes-high-rises-and-the-meatloaf-principle-australias-top-audit-fails/>

assistance.²⁰ These figures are a damning indictment on the Australian federal government – they don't even come close to meeting basic living standards in today's Australian cost of living including housing, utility bills, transport, medical, food, and other necessary costs of daily life. On top of this, a recent third attempt has been made to pass a proposal to drug test welfare recipients of Newstart and Youth Allowance.²¹

Additionally, Medicare ineligibility affects PLHIV who are working or studying in Australia whose country of origin does not have a Reciprocal Health Care Agreement with the Australian Government, PLHIV migrants (refugees and humanitarian entrants) to Australia who have applied for permanent residency, and migrants, asylum seekers to Australia who are ineligible for Medicare. This means that for these PLHIV it can be exceptionally costly to access HIV medication, which has negative flow on effects not only to their health but also to public health aims of reducing HIV transmission rates (as PLHIV who are on antiretroviral treatment, and have been able to maintain viral suppression with an 'undetectable viral load' for six months or more, have zero risk of passing HIV onto sexual partners).²² This is striking considering that Australia issues approximately two million temporary visas annually, almost all of which are Medicare ineligible; 25% of men who have sex with men (MSM) in urban areas are estimated to be Medicare ineligible; and newly arrived Asian born MSM are four times more likely than long term resident MSM to become HIV-positive after they arrive in Australia.²³

The government is also failing its obligation to: fulfil positive actions to advance human rights by providing targeted programs to address known inequalities such as Close the Gap, National frameworks on family violence, child protection, National Disability Insurance Scheme. 58 women have been murdered in Australia so far this year (as at 29 October 2019), with 47 of these (allegedly) perpetrated by a current or former partner, as well as 20 children.²⁴ Yet the Australian government continues to privatise rape and domestic violence services (such as 1800RESPECT) to for-profit organisations whose primary interest is in making money over and above human rights and human lives,²⁵ as well as combine women's services with other agendas, such as funding for women's refuges allocated under the homelessness agenda.²⁶ It is clear the government is not doing enough to ensure the protection of human rights of all people in Australia, especially those who are most vulnerable and marginalised.

Stigma and discrimination

PLHIV have experienced significant stigma and discrimination for decades at the hands of ignorant and antagonistic people, including those who claim their views have a basis in their religious beliefs and those whose views are backed up by the law in Australia. Stigma and discrimination have been linked to poorer health and social determinants of health outcomes, increased risk for joblessness and homelessness, social isolation, mental health issues, and co-, multi- and early-morbidities. The effects of stigma and discrimination are greater and more acute when there are intersectional

²⁰ Australian Council of Social Services, "Analysis of the impact of raising benefit rates", (2018), accessible at

<https://www.acoss.org.au/wp-content/uploads/2018/09/DAE-Analysis-of-the-impact-of-raising-benefit-rates-FINAL-4-September-...-1.pdf>

²¹ ABC News, 'Drug testing welfare recipients is about morality not policy', (2019), accessible at: <https://www.abc.net.au/news/2019-09-12/drug-testing-welfare-recipients-is-about-morality-not-policy/11504532>

²² Crawford, D. (2019). Unpacking undetectable = untransmissible (U=U). *Positive Life NSW*, accessible at <http://www.positivelife.org.au/blog-treatments/unpacking.html>

²³ Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine, 'Newly available HIV resources supporting health providers and patients to navigate the Australian health and immigration system', (2019), accessible at: <https://ashm.org.au/news/hiv-and-immigration-and-medicare-ineligible/>

²⁴ Impact for Women, 'Australia's death count: 2019', (2019), accessible at: <http://www.impactforwomen.org.au/australias-death-toll-2019.html>

²⁵ Women's Agenda, "'It's devastating": 1800 RESPECT hotline to lose 70 highly-skilled, trauma counsellors', (2019), accessible at: <https://womensagenda.com.au/latest/the-1800-respect-hotline-thrown-into-chaos/>

²⁶ Eureka Street, 'Budget slights domestic violence services', (2018), accessible at: <https://www.eurekastreet.com.au/article/budget-slights-domestic-violence-services>

oppressions and multiple layers of discrimination, such as when an individual is living with HIV, as well as identifying as LGBTQIA+, Aboriginal and/or Torres Strait Islander, a woman, and/or from a diverse racial or cultural background with English as an additional language for example. These experiences of oppression, stigma and discrimination cause far-reaching and often lifelong negative effects. For example, “in 2018 an International Women’s Health Coalition study found a failure to provide abortions to women has terrible impacts by placing ‘patients at risk of discrimination, physical and emotional harm, and financial stress’. Those possible harms included death.”²⁷

The prevalence of ignorant stigmatising and discriminatory views, attitudes and beliefs held in opposition to scientific, factual realities contribute to the very real experiences of human rights breaches in Australia that are not legally enforceable or realistically avoidable by a robust system of human rights protections. From the ongoing and widespread conflation of HIV with “gay activities”, non-monogamy and an imminent death-sentence, to abortion with being irresponsible and “murder”, it is clear that the legislative framework in Australia as it currently stands is woefully inadequate in providing a fair, equitable and robust system for the equal protection of all human rights all the way from policy into practice.

Positive Life believes that consistency and harmonisation between state, territory and federal discrimination laws should be improved for greater clarity and simplicity. Any reforms to discrimination laws in Australia should ensure that protections across the community are maintained, so that changes do not involve creating new forms of discrimination against any section of society.

We agree with the Commission’s recommended proposals to: address limitations in coverage of existing protected attributes by expanding protections for carer/family responsibilities, state government employees, volunteers and interns.²⁸

Positive Life agrees with the Commission’s recommended proposals to: address gaps in protections and consider the need for other new protected attributes and the transition of other grounds under the Commission’s ILO111 jurisdiction, in particular irrelevant criminal record, as well as trade union activity/industrial activity, and political opinion.²⁹

We also agree with the Commission’s recommended proposals to: review all permanent exemptions under discrimination law to ensure that they are strictly necessary and result in the minimum intrusion on people’s rights, transition certain exemptions to being periodic in nature or sunseting those that are no longer required or fail to meet community standards.³⁰

The climate crisis is a health, social justice, and human rights issue

In 2015, the World Health Organisation (WHO) recognised that climate change is the “greatest threat to global health in the 21st century”, “health professionals have a duty of care to current and future generations” and argued the scientific evidence for that assessment is “overwhelming”.³¹

²⁷ Shi, E, Gordon, A. (2019). Women may find it tougher to get an abortion if the religious discrimination bill becomes law. *The Conversation*, accessible at <https://theconversation.com/women-may-find-it-tougher-to-get-an-abortion-if-the-religious-discrimination-bill-becomes-law-123089>

²⁸ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: Priorities for federal discrimination law reform’

²⁹ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: Priorities for federal discrimination law reform’

³⁰ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Discussion Paper: Priorities for federal discrimination law reform’

³¹ World Health Organisation, ‘WHO calls for urgent action to protect health from climate change’, (2019), accessible at: <https://www.who.int/globalchange/global-campaign/cop21/en/>

WHO goes on to note that the number of deaths globally from cancer, respiratory and cardiovascular diseases caused by air pollution sits at over seven million each year. The American Medical Association and the American College of Physicians recognised climate change as a health emergency in June 2019, and in July 2019 the British Medical Association declared a climate emergency and committed to campaign for carbon neutrality by 2030.³² We support and agree with the Australian Medical Association (AMA), when in September 2019 they also declared climate change a health emergency and is calling on the Australian government to promote an active transition from fossil fuels to renewable energy; adopt mitigation targets within an Australian carbon budget; promote the health benefits of addressing climate change; develop a national strategy for health and climate change; and establish a National Sustainable Development Unit to reduce carbon emissions in the healthcare sector.³³

Dr Tony Bartone, the President of the AMA, says the science suggests climate change will “affect human health and wellbeing by increasing the situations in which infectious [vector-borne] diseases can be transmitted, and through more extreme weather events, particularly heatwaves. Climate change will cause injury and mortality from increasingly severe weather events. Climate change will cause increases in the transmission of vector-borne diseases. Climate change will cause food insecurity resulting from declines in agricultural outputs. Climate change will cause a higher incidence of mental ill-health. These effects are already being observed internationally and in Australia. There is no doubt that climate change is a health emergency.”³⁴ Additionally, Australian health and medical groups, including Doctors for the Environment, the Climate and Health Alliance, the Royal Australian College of Physicians, and the Australian Medical Students’ Association addressed all political parties in a letter in April 2019 outlining the “significant and profound impacts climate change has on the health of people and our health system” and key areas for action urgently required by government on all levels.³⁵

The AMA Federal Council also notes that “climate change ... will have the earliest and most severe health consequences on vulnerable populations around the world, including in Australia and the Pacific region”.³⁶ Particularly at risk are people with chronic illnesses such as HIV, heart disease, diabetes or cancers, and people aged 65 years and over.³⁷ It is also noted that the effects of climate change are and will continue to exacerbate health and social inequalities, disproportionately affecting the most vulnerable people within society, such as Indigenous people, children and pregnant women, people with low incomes, and people from culturally and linguistically diverse backgrounds.³⁸ The Australian government’s response, or continued lack of response, will determine the health, wellbeing and enjoyment of human rights of all Australians over the coming decades, particularly those most vulnerable.

³² The Guardian, ‘Australian Medical Association declares climate change a health emergency’, (2019), accessible at:

<https://www.theguardian.com/australia-news/2019/sep/03/australian-medical-association-declares-climate-change-a-health-emergency>

³³ Australian Medical Association, ‘Climate Change is a Health Emergency’, (2019), accessible at: <https://ama.com.au/media/climate-change-health-emergency>

³⁴ Australian Medical Association, ‘Climate Change is a Health Emergency’, (2019), accessible at: <https://ama.com.au/media/climate-change-health-emergency>

³⁵ Our Climate, Our Health, ‘An open letter to political parties and candidates: Australian election 2019’, (2019), accessible at: <https://www.dea.org.au/wp-content/uploads/2019/04/Open-Letter-Fed-election-2019-.pdf>

³⁶ Australian Medical Association, ‘Climate Change is a Health Emergency’, (2019), accessible at: <https://ama.com.au/media/climate-change-health-emergency>

³⁷ Scientific America, ‘Climate Change Is Having a Major Impact on Global Health’, (2019), accessible at: <https://www.scientificamerican.com/article/climate-change-is-having-a-major-impact-on-global-health/>

³⁸ Climate Health Action, ‘U.S. Call to Action on Climate, Health, and Equity: a Policy Action Agenda’, (2019), accessible at: https://climatehealthaction.org/media/cta_docs/US_Call_to_Action.pdf

Data from the Australia Government Department of the Environment and Energy released in August 2019 confirms that greenhouse gas emissions continue to rise in Australia,³⁹ with national emissions increasing by 3.1m tonnes in the 12 months to March 2019 (0.6% increase from the previous year), reaching 538.9m tonnes. The Guardian notes that: “emissions in Australia have increased every year since the Abbott government repealed a national carbon price after taking office in 2013.”⁴⁰

In June 2019, more than 70 medical and public health organisations published a Call to Action on Climate, Health and Equity: A Policy Action Agenda, including the American Medical Association, American College of Physicians, American Heart Association, American Public Health Association, and the Center for Climate Change and Health. The climate agenda implores governments to enact a range of priorities that will see equitable climate action resulting in widespread benefits to health, safety and wellbeing, including: transition rapidly away from the use of coal, oil and natural gas to clean, safe, and renewable energy and energy efficiency; emphasize active transportation in the transition to zero-carbon transportation systems; promote healthy, sustainable and resilient farms and food systems, forests, and natural lands; ensure that all residents have access to safe and affordable drinking water and a sustainable water supply; invest in policies that support a just transition for workers and communities adversely impacted by climate change and the transition to a low-carbon economy; engage the health sector voice in the call for climate action; incorporate climate solutions into all health care and public health systems; build resilient communities in the face of climate change; and invest in climate and health.⁴¹

The Agenda goes on to note that “a just transition to clean, safe renewable energy and energy efficiency, sustainable food production and diets, active transportation, and green cities will lower climate pollution while simultaneously reducing the incidence of communicable and non-communicable disease, improving mental health, and promising significant health care cost savings.”⁴² The Australian government has within its remit, power and financial capabilities to avoid thousands of deaths in Australia annually, as well as fulfil its obligations to protect the human rights to physical and mental health, adequate standard of living, social security, property, and life.

Holding the government to account for its actions in protecting human rights

The Commission outlines that: “in relation to economic, social and cultural rights, it is also acknowledged that full protection of human rights takes time:

- The progressive realisation principle requires that governments take all necessary steps, to the maximum of available resources, to address human rights concerns.
- This requires governments to justify that they are prioritising key human rights issues and are positively improving outcomes over time, at the greatest rate of progress that is achievable.
- Under this principle, a government can breach human rights by inaction, or failing to take action.”⁴³

Positive Life acknowledges that Australia, in general, currently enjoys a relatively high standard of living, however this is not equally shared by all Australians. For the Australian government to honour its international obligations, it must respect, protect and fulfil human rights to the maximum of

³⁹ Australia Government Department of the Environment and Energy, ‘Quarterly Update of Australia’s National Greenhouse Gas Inventory: March 2019’, (2019), accessible at: <https://www.environment.gov.au/system/files/resources/6686d48f-3f9c-448d-a1b7-7e410fe4f376/files/nggi-quarterly-update-mar-2019.pdf>

⁴⁰ The Guardian, ‘Australian Medical Association declares climate change a health emergency’, (2019), accessible at: <https://www.theguardian.com/australia-news/2019/sep/03/australian-medical-association-declares-climate-change-a-health-emergency>

⁴¹ Climate Health Action, ‘U.S. Call to Action on Climate, Health, and Equity: a Policy Action Agenda’, (2019), accessible at: https://climatehealthaction.org/media/cta_docs/US_Call_to_Action.pdf

⁴² Climate Health Action, ‘U.S. Call to Action on Climate, Health, and Equity: a Policy Action Agenda’, (2019), accessible at: https://climatehealthaction.org/media/cta_docs/US_Call_to_Action.pdf

⁴³ Australian Human Rights Commission, 2019, ‘Free and Equal, An Australian Conversation on Human Rights, Issues Paper’

available resources and at the greatest possible rate of progress. The government is currently failing not only the most vulnerable populations within Australia, it is failing every one of us by not taking every reasonable step available to it for the purposes of fulfilling its human rights obligations in a timely, equitable, inclusive and adequate manner for the benefit of all Australians. We commend the Commission for instigating the Conversation and advocating for an Australian Human Rights Act.

If this submission requires additional information or clarification, we can be contacted on 02 9206 2177 or at ceo@positivelife.org.au.

Yours respectfully,



*Craig Andrews
Interim co-Chief Executive Officer*



*Neil Fraser
Interim co-Chief Executive Officer*

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Submission supported by:

napwha national association of
people with HIV australia

