

Office of International Law  
Attorney-General's Department  
3-5 National Circuit  
Barton, ACT 2600

18<sup>th</sup> March 2011

Dear Sir,

B'nai B'rith Australia / New Zealand (BBANZ) is pleased to provide the following responses to your request for comment on recommendations in relation to Australia's Universal Periodic Review.

Recommendations 86.14, 86.15, and 86.16

BBANZ at this stage is not in favour of withdrawing Australia's reservations to Article 4(a) of ICERD, because we are yet to be convinced that racial discrimination is effectively eliminated through the creation of a new criminal offence. We would welcome a review of the Racial Hatred Act to determine whether the current legislation is effectively responding to contemporary challenges.

Recommendation 86.31

BBANZ accepts the scientific evidence of climate change and the argument that human activity has resulted in increased greenhouse gas emissions. We accept that failure to implement appropriate counter-measures throughout the world will reduce the quality of life for many people. We support the spirit of Recommendation 31, although we have reservations about

- (a) the meaning of a "rights-based approach";
- (b) the lack of clarity and expert opinion as to what are "safe levels";
- (c) the capacity of Australia to influence climate change policy "abroad".

Recommendations 86.124, 86.125, and 86.133

BBANZ welcomes the Australian delegation's commitment to its *non-refoulement* obligations.<sup>1</sup> In addition, we note and support Australia's position that, as part of the asylum process, some asylum seekers are found not to require protection and are asked to return home.

The safety of persons returned to some countries in the region including Afghanistan and Sri Lanka is in doubt. The memorandum of understanding signed by the governments of Australia and Afghanistan in January this year providing for the involuntary return to Afghanistan of Afghan asylum seekers judged not to be in need of international protection "offered very little to guarantee the integrity of the process by which it would be judged whether an asylum applicant needed protection or not"<sup>2</sup>, or that they would be safe. UNHCR reports that many returned Afghan asylum seekers have returned to a deteriorating security situation and now live as unregistered refugees in Iran and Pakistan. In January this year it was reported that there were about 2,600 Afghans in Australia's detention centres. Of those, 49 must win court appeals to avoid immediate deportation.

BBANZ considers that the safety of persons being returned must be central to any removal process in order to demonstrate Australia's commitment to its international obligations. No comprehensive pre-removal risk assessment procedure is in place in Australia to inform decisions about return to these countries. BBANZ therefore endorses recommendations 86.124, 86.125 and 86.133 of the UPR supporting domestic practices which respect the principle of *non-refoulement* in the processing of claims prior to the return of asylum seekers to their countries of origin. Further, BBANZ calls for the introduction of a transparent pre-removal risk assessment procedure and the development of a process of independent monitoring of the safety of those returned. This process would inform future decisions about asylum applications from citizens of those countries.

#### Recommendations 86.123, 86.127 and 86.131

BBANZ welcomes the commitment of the Australian Government "to treating asylum seekers and refugees humanely and fairly" and to its Detention Values, under which detention in immigration detention centres is to be used only as a last resort and for the shortest practicable time.<sup>3</sup> BBANZ notes, however, that during 2010, the number of people in immigration detention grew to a record level. As at 14 January 2011, 6,730 people were in some form of immigration detention – nearly double the previous record set 10 years earlier. Of those detained as at 14 January 2011, only 45 were in community detention arrangements. The great majority of detainees are asylum seekers who are subject to the Government's policy of indefinite mandatory detention for people who enter Australia without visas. Half (49.9%) of the detainees have been detained for six months or more.

BBANZ also notes with concern the remote location of many of the detention centres both offshore and onshore, limited access to basic services, evidence of overcrowding in the centres, and increased risk of deterioration of the mental health of this vulnerable and traumatised population, all of which are well documented. BBANZ notes as well the increase in detention accommodation including the decision to build a 1,500-bed detention centre at Wickham Point and to expand the Darwin accommodation facility by 400 beds in March 2011.

BBANZ therefore endorses recommendations 86.123, 86.127 and 86.131 that asylum seekers are only detained when necessary, that Australia reviews its mandatory detention regime limiting detention to the shortest time necessary, and ensures access to legal and health assistance.

#### Recommendation 86.129

BBANZ notes the commitment of the Australian delegation to the UPR that "children will not be detained in an immigration detention centre". However in March 2011, Amnesty International Australia reported that 1,027 asylum seeker children, including a significant number of unaccompanied minors, were being detained in what the government calls "alternative places of detention", which are monitored by security staff 24 hours per day.

While the Government has made a commitment to remove all children from detention by June 2011, this process is slow. Given that the practice of detaining children has been shown to cause them significant harm - particularly those who have fled horrific situations of war or persecution - BBANZ supports recommendation 86.129 that no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children.

## Recommendations 86.59 and 86.65

BBANZ supports the general thrust of recommendations 86.59 and 86.65 to strengthen measures to combat discrimination against minority groups. However, we have two major reservations about these specific recommendations:

(1) we believe that whatever discrimination against minority groups exists in Australia is not directed at whole communities or populations (as suggested in these recommendations) but rather at individuals or small groups of people who have been identified and stereotyped according to their supposed ethnicity.

(2) we believe that all measures taken to combat discrimination and stereotyping, whether by education, legislation, or media campaigns etc., should not single out any specific religious or ethnic group. These issues are broad in their application, and such measures need to embrace all minority groups. Singling out specific groups for attention as suggested can produce a backlash against other minority groups, thereby exacerbating inter-ethnic tensions and potentially increasing rather than reducing discrimination against those groups.

In summary, national policy should be framed and applied in terms of general principles, not specific groups.

## Recommendation 86.98

BBANZ supports the apparent intention of recommendation 86.98 of regulating the purveyors of hate-speech, but has concerns at some of the specific wordings of this recommendation:

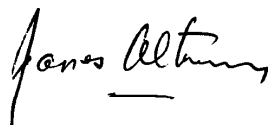
- (1) the meaning of “regular measures” is confusing; if the word “regular” had been omitted, this would make more sense;
- (2) hate speech can't be prevented; however, measures can be implemented to deal with its purveyors, using legal means as well as creating a climate in which such action is deemed unacceptable;
- (3) “prompt” in relation to legal action is inappropriate - our legal systems provide safeguards which should not be overridden;
- (4) “motivated by racial, ethnic or religious reasons” – the motivation for such action is almost impossible to determine.

We would support a recommendation along these lines:

“Take measures to address the incidence of hate-speech in the community, including legal action against those who incite racial discrimination and racial violence.”

*B'nai B'rith is the oldest and most widely known Jewish humanitarian, human rights and advocacy organisation. B'nai B'rith has accredited NGO status at the United Nations in both New York and Geneva.*

Yours sincerely



James Altman  
President, B'nai B'rith Australia / New Zealand

## Notes:

<sup>1</sup> Draft Report of the Working Group of the Universal Periodic Review (Australia) 24 Jan – 4 Feb 2011; p. 9, para 55.

<sup>2</sup> Professor William Maley, Director Australia Pacific College of Diplomacy, Australian National University in The Age, 21 January 2011.

<sup>3</sup> *ibid.* p. 9, para 56