

## AUSTRALIAN NGO PRIORITY ISSUE SHEETS – CEDAW 2010

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## **ARTICLES 1-3: DEFINITION OF DISCRIMINATION AGAINST WOMEN, OBLIGATIONS TO ELIMINATE DISCRIMINATION AGAINST WOMEN AND ADVANCEMENT OF WOMEN**

### **POSITIVE DEVELOPMENTS**

- Australia ratified the *Optional Protocol to CEDAW* and the *Convention on the Rights of Persons with Disabilities*, signed the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, and formally supported the *Declaration on the Rights of Indigenous Peoples*.
- Victoria and the Australian Capital Territory enacted human rights legislation, predominantly based on the *International Covenant on Civil and Political Rights*. The Tasmania government has announced it will enact a charter of rights that will include protection of economic, social and cultural rights. Victoria also enacted new anti-discrimination law that includes stronger mechanisms for addressing systemic discrimination.
- The Australian Government announced an 'Australian Human Rights Framework', which includes measures to strengthen the promotion and protection of human rights in Australia, including greater parliamentary scrutiny of legislation.
- The Australian Government introduced draft legislation to amend the *Sex Discrimination Act* to protect against discrimination on the basis of breastfeeding, and provide greater protection against sexual harassment and discrimination on the basis of family & caring responsibilities.
- The Australian Parliament passed a *Motion of Apology to Australia's Indigenous Peoples* for 'the laws and policies of successive governments that have inflicted profound grief, suffering and loss' on Aboriginal and Torres Strait Islander people, and in particular for the removal of Aboriginal and Torres Strait Islander children from their families, communities and country.
- Australia governments agreed to a partnership between all levels of government to work with Indigenous communities to 'close the gap' on Indigenous disadvantage.

### **RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government be congratulated for its ratification of the *Optional Protocol to CEDAW* and for ratifying, signing or supporting other international human rights instruments, including the *Declaration on the Rights of Indigenous Peoples*.
- ⇒ THAT the Victorian, Australian Capital Territory and Tasmanian governments be commended on developing human rights legislation.
- ⇒ THAT the Australian Government be commended on its steps to strengthen human rights and sex-discrimination protections and that it be encouraged to ensure that these measures are implemented as a matter of priority.
- ⇒ THAT the Australian Parliament be commended on its *Motion of Apology to Australia's Indigenous Peoples*.
- ⇒ THAT the Australian Government be commended for its commitments to 'close the gap' on Indigenous disadvantage and be encouraged to ensure that all measures are taken to consider the particular needs of Aboriginal and Torres Strait Islander women.

### **CHALLENGES**

#### **Gaps in human rights and anti-discrimination protections**

While some improvements have been made to Australia's human rights and anti-discrimination protections, significant gaps remain. In particular:

- the Australian Government announced it did not support a *Human Rights Act* – despite overwhelming support and a formal recommendation for such an Act in the National Human Rights Consultation – and deferred consideration of the issue until 2014;
- the *Sex Discrimination Act* fails to provide the legislative framework necessary to properly address direct or systemic discrimination or to promote substantive equality – it does not contain a general prohibition on sex discrimination and it places the burden for addressing

sex discrimination on individual complainants, rather providing mechanisms to focus on entrenched discrimination;

- anti-discrimination laws do not adequately deal with issues of intersectional discrimination, such as discrimination against Aboriginal and Torres Strait Islander women, women with disabilities, and women from culturally and linguistically diverse backgrounds; and
- the Australian Human Rights Commission, and in particular the Sex Discrimination Commissioner, need increased funding and stronger functions to better address systemic discrimination.

The Australian Government has committed to consolidating and harmonising federal anti-discrimination law into a single Act, and to considering unimplemented parliamentary committee recommendations to strengthen the *Sex Discrimination Act* as part of this process. This consolidation process provides an excellent opportunity to address the gaps in anti-discrimination protection and consider an *Equality Act*, but it is unclear whether the Government intends to do this.

At the State and Territory level, Victoria and the Australian Capital Territory are the only states or territories to have enacted human rights legislation, and economic, social and cultural rights are not comprehensively protected in that legislation. Anti-discrimination frameworks also include exemptions, including for religious institutions, which perpetuate unfair and unreasonable discrimination against women.

**QUESTIONS FOR THE AUSTRALIAN GOVERNMENT**

⇒ Is the anti-discrimination law consolidation process going to address the lack of protection for systemic discrimination, substantive equality and intersectional discrimination, and other gaps in the coverage of Australia's anti-discrimination protections?

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government develop and release a draft Human Rights Bill that makes explicit reference to CEDAW and substantive equality for women before the review of the Human Rights Framework in 2014.
- ⇒ THAT the Australian Government implements, as a priority, its project to consolidate and harmonise Australia's anti-discrimination laws and that it does so on the basis of broad consultation and in a manner that strengthens anti-discrimination laws.
- ⇒ THAT the Australian Government provide increased funding and functions to the Australian Human Rights Commission to better address systemic discrimination.
- ⇒ THAT all Australian governments adopt laws and policies which provide for comprehensive protection – without any permanent exceptions – of:
  - the right to equality and non-discrimination, including providing effective remedies against systemic and intersectional discrimination; and
  - all human rights, including economic, social and cultural rights.

**Discrimination on the basis of sexual orientation or gender identity**

While recent amendments to federal laws gave equal financial and workplace benefits to same-sex couples, there is still no comprehensive federal law prohibiting discrimination on the basis of sexual orientation or gender identity. Lesbian couples are also unable to marry under Australian law and ineligible to adopt children in most states and territories.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT all Australian governments enact comprehensive legislation prohibiting discrimination on the basis of sexual orientation or gender identity, and remove discriminatory exemptions in existing anti-discrimination frameworks.
- ⇒ THAT the Australian Government extend marriage to same-sex couples and work with State and Territory governments towards a nationally consistent and non-discriminatory approach to relationship recognition, that includes same-sex and mixed-sex couples on terms of equality, and to eliminate discrimination against lesbian couples in relation to adoption.

### **‘Northern Territory Emergency Response’ intervention into Aboriginal communities**

In 2007, the Australian Government’s introduced a range of extraordinary measures into Aboriginal communities in the Northern Territory, including deploying military and police in traditional lands, quarantining social security payments, banning alcohol and the compulsory acquisition of Aboriginal land. Aboriginal women hold mixed views about the measures, with some reporting they feel safer as a result of the increased police presences, alcohol bans and income management, and other women expressing distress and deep concern about the measures and about the way they were implemented. The Special Rapporteur on Indigenous Rights has also expressed serious concern about the measures and the lack of consultation.

The measures raise significant concerns about Australia’s international obligations to respect and promote the human rights of Aboriginal women, including the:

- failure of the Australian Government to refer to children’s rights and human rights principles in framing its response;
- lack of consultation and engagement with Aboriginal communities about the measures;
- suspension of the *Racial Discrimination Act* and *Northern Territory Anti-Discrimination Act*;
- compulsory acquisition and taking control of Aboriginal land and community living areas;
- compulsory income management regime, which includes measures to quarantine welfare payments for specific purposes and has now been extended across Australia.

While the application of the *Racial Discrimination Act* will be reinstated from 31 December 2010, many Aboriginal women are still concerned that the ongoing measures remain racially discriminatory. Further, many women have reported that the consultations that took place as part of the 2010 reforms to the intervention were inadequate and did not meet the benchmarks establishing in the *Declaration on the Rights of Indigenous Peoples*.

#### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

⇒ What steps will the Government take to ensure that its Northern Territory Intervention is not racially discriminatory and in breach of its international human rights obligations?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government should repeal the remaining aspects of the Northern Territory Intervention legislation that are racially discriminatory and incompatible with domestic and international human rights standards.

⇒ THAT all Australian governments establish policies of consultation with Aboriginal and Torres Strait Islander communities that meet the benchmarks established in the *Declaration on the Rights of Indigenous Peoples*, which require genuine respect for cultural integrity and self determination, and provide ongoing and resourced mechanisms to ensure direct dialogue with Aboriginal and Torres Strait Islander women.

### **Unavailability of gender disaggregated data**

Despite the particular concerns expressed in the Committee’s 2006 Concluding Comments about the lack of reporting of data disaggregated by gender, sex and disability, availability of such data remains limited. Concerns continue to exist about the failure to collect and make readily available data disaggregated by gender and other characteristics, such as disability, ethnicity, age and geographical location. Women with disabilities and Aboriginal and Torres Strait Islander women have reported that this has created particular difficulties in analysing and developing legal and policy measures to realise equality.

#### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

⇒ How will the Government improve the collection and availability of gender disaggregated data?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government improve availability of gender disaggregated data, including disaggregation by disability, ethnicity, age and geographical location.

## ARTICLES 4 & 5: ACCELERATION OF EQUALITY (TEMPORARY SPECIAL MEASURES) AND SEX ROLES & STEREOTYPING

### POSITIVE DEVELOPMENTS

- New measures implemented by the Australian Securities Exchange (ASX) Corporate Governance Council, the Australian Institute of Company Directors and the Business Council of Australia to address the under-representation of women on boards/senior management.
- The 2008-2009 parliamentary inquiry into pay equity for women (see *Article 11 issue sheet*).
- An application by industrial unions to Fair Work Australia that aims to improve the pay levels of workers in the social and community services sector to overcome the historic devaluation of this sector's work which has been seen as 'women's work'.
- The release of *A Proposed National Strategy on Body Image* and a *Voluntary Industry Code of Conduct on Body Image*, which has been supported by the Australian Government.
- The new National Congress of Australia's First Peoples has a National Executive with equal representation of women and men in accordance with the Congress's commitment to gender equity in leadership and decision-making.

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the ASX Corporate Governance Council, the Australian Institute of Company Directors and the Business Council of Australia be commended for their measures to address the underrepresentation of women on boards and in senior management.
- ⇒ THAT the Australian Government be commended for developing a Proposed National Strategy on Body Image and supporting the Voluntary Industry Code of Conduct, and be called upon to implement the remainder of the Strategy.
- ⇒ THAT the National Congress of Australia's First Peoples be commended for its leadership in establishing an executive with equal representation of women and men.

### CHALLENGES

#### Underrepresentation of women on boards and in senior management

Women continue to be significantly underrepresented on boards and at senior management levels. In 2008 women comprised 33% of government boards and in 2009 women comprised 8.3% of directors on the Top 200 ASX boards, the largest 200 publicly listed companies in Australia. Despite this, the Australian Government does not support the adoption of quotas or targets as recommended in the Committee's 2006 Concluding Comments. We note the success of Norwegian laws requiring 40% female representation on boards where targets were achieved by a vast majority of organisations within the specified two-year period (where the penalty for non-compliance was dissolution).

*Women with disabilities:* Women with disabilities are almost completely invisible in leadership and decision-making and are generally excluded from being considered for such roles.

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government introduce a mandatory quota of 40 per cent representation of women on all Australian Government Boards, to be achieved over three years.
- ⇒ THAT the Australian Government promote a target of 40 per cent representation of women on all publicly listed boards, to be achieved over three years; and, if progress is not made after three years, legislate to require publicly listed companies and other large employers to achieve a mandatory gender diversity quota of at least 40 per cent of women within a specified timeframe, with penalties for failure to comply.

### **Wrongful gender stereotyping**

*Stereotypes around work and caring:* Gender stereotypes around work and caring limit women's opportunities and contribute to the gender pay gap and the underrepresentation of women on boards and in senior management. There are ongoing issues in relation to the 'feminisation' of some sectors and professions in Australia such as the social and community services sector - which is the subject of the pay equity case - where 87% of employees are women and whose work has been undervalued and underpaid as a result, impacting both on income and retirement savings. The role of men in care-giving needs to be promoted and supported to address entrenched community attitudes that the role of women is of primary care giving and the role of men is that of primary breadwinners.

*See also the Recommendations Proposed for Concluding Observations under Article 11 in relation to pay equity.*

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ **THAT the Australian Government proactively address cultural stereotypes that militate against male participation in child-rearing and reinforce the feminisation of care.**

## ARTICLE 6: SUPPRESSION OF THE EXPLOITATION OF WOMEN

### POSITIVE DEVELOPMENTS

The Australian Government has:

- comprehensively criminalised the practice of trafficking in persons with the *Criminal Code Amendment (Trafficking in Persons) Offences Act 2005*;
- made a significant commitment to the prevention of trafficking by funding the *Commonwealth Action Plan to Eradicate Trafficking in Persons*;
- committed funding to various NGOs that provide outreach for victims of trafficking and conduct education and awareness initiatives on people trafficking;
- made significant improvements to the human trafficking visa regime and access to support programs.

### RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government be commended for its:
- work in preventing and criminalising trafficking in persons, including its funding of the anti-trafficking action plan and of key anti-trafficking NGOs; and
  - significant improvements to the human trafficking visa regime and access to support programs.

### CHALLENGES

#### Improving responses to trafficked women

*Visa regimes:* Some reforms are still needed to the visa system, including expanding criminal justice stay visas to cover civil proceedings, removing the links between support and protection programs and assistance with criminal investigations, developing referral protocols to improve interagency cooperation, and the need for police sponsorship of visa applications.

*Repatriation:* There is a dearth of information available and no guidelines for police in relation to repatriation procedures for trafficked women. The Australian Government's return and reintegration pilot project in Thailand should be independently reviewed, and the program should be expanded to trafficked persons from other stages with local organisations funded to provide repatriation support.

*Other issues:* The Australian Government's Communication Awareness Strategy should be reviewed, in consultation with NGOs, and amended so that it applies to all forms of trafficking. It should also require the contact details of NGOs to be included in awareness raising material. There is also a lack of appropriate emergency and ongoing accommodation for trafficked women.

### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

- ⇒ What repatriation procedures are in place for trafficked women?
- ⇒ What steps has the Australian Government taken to carry out a comprehensive review of its repatriation programs?
- ⇒ What steps has the Australian Government taken to ensure appropriate emergency and ongoing accommodation is available for women who have been victims of trafficking?

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government be encouraged to use a human rights framework in updating its *Action Plan to Eradicate Trafficking in Persons*, and move away from a predominantly criminal justice framework.
- ⇒ THAT the visa regime and eligibility to the support program be reviewed to assess whether the Australian Government is supporting sufficiently all victims of trafficking, ensuring transparency in the way trafficking visas are allocated and revoked, and achieving its stated protection and prevention objectives and outcomes.
- ⇒ THAT the Australian Government work to address shortcomings in the emergency and ongoing accommodation available for women who have been victims of trafficking.



## ARTICLES 7 & 8: PUBLIC AND INTERNATIONAL PARTICIPATION

### POSITIVE DEVELOPMENTS

- There has been an increase in women being appointed or elected to very senior leadership positions, including the Prime Minister, the Governor-General and the High Court judges.
- A new national Indigenous representative body, the National Congress of Australia's First Peoples, was established in May 2010 with equal representation of women and men on its National Executive.
- A woman with disability was elected to a State parliament for only the second time in Australian history.
- The Australian Government funded six National Women's Alliances, including alliances bringing together Aboriginal and Torres Strait Islander women, women from rural areas, and immigrant and refugee women, and an alliance focusing on violence against women.
- The Australian Government funded a number of projects undertaken by national women's NGOs, including projects to coordinate the NGO contribution to the CEDAW review.
- The Australian Government reviewed its international development aid family planning guidelines and removed the ban on organisations that provide abortion services.
- The Australian Government supported the participation of NGO representatives, including Aboriginal and Torres Strait Islander women, at the Commission on the Status of Women.
- Megan Davis, an Aboriginal woman, was elected to the United Nations Permanent Forum on Indigenous Peoples.

#### QUESTION FOR THE AUSTRALIAN GOVERNMENT

⇒ How will the Australian Government ensure that women continue to be better represented in Parliament, public office and community leadership, including Aboriginal and Torres Strait Islander women, women with disabilities, rural women, and women from culturally and linguistically diverse backgrounds?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the increased women's representation in senior public office and support of women's participation at international forums be welcomed, and THAT the Australian Government be encouraged to consider ways to consolidate and improve the increased profile of women.
- ⇒ THAT the establishment of the National Congress of Australia's First Peoples be welcomed and that the Congress be commended for its leadership in establishing an executive with equal representation of women and men.
- ⇒ THAT the Australian Government be commended on its funding of six National Women's Alliances, including an alliance for Aboriginal and Torres Strait Islander women, and for its support of national women's NGOs' projects, and be encouraged to support/fund training and development opportunities that lead to increased participation for diversity groups.

### CHALLENGES

#### Representation of Aboriginal and Torres Strait Islander women

The CEDAW Committee expressed concern in 2006 about inequalities suffered by Aboriginal and Torres Strait Islander women in political participation. In 2010, the mechanisms for the participation of Aboriginal and Torres Strait Islander women in public life and the formulation of public policy remain inadequate. There are no Aboriginal women in the Australian federal parliament, and few at the State level. Aboriginal and Torres Strait Islander land and community councils continue to be dominated by men.

#### QUESTION FOR THE AUSTRALIAN GOVERNMENT

⇒ How will the Australian governments ensure that Aboriginal and Torres Strait Islander women are better represented in Australian parliaments?

### **Insufficient consultation with Aboriginal and Torres Strait Islander women**

Aboriginal and Torres Strait Islander women have reported a number of concerns with government consultations. Women report feeling that policy is always developed from the top-down and rarely from the bottom-up and in genuine consultation. In particular, the Northern Territory Intervention measures were implemented with insufficient community consultation. Women also reported that governments tend to over-consult with particular individuals and communities and under-consult with others.

**QUESTION FOR THE AUSTRALIAN GOVERNMENT**

⇒ How will the Australian Government ensure that Aboriginal and Torres Strait Islander women are genuinely consulted in the development of policies and programs that affect their communities?

**RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT all Australian governments establish policies of consultation with Aboriginal and Torres Strait Islander communities that meet the benchmarks established in the *Declaration on the Rights of Indigenous Peoples*, which require genuine respect for cultural integrity and self determination, and provide ongoing and resourced mechanisms to ensure direct dialogue with Aboriginal and Torres Strait Islander women.

### **Participation of women with disabilities**

Women with disabilities have only one representative in Australian parliaments and few in other elected offices across the country, despite making up about 10% of the Australian population. Women with disabilities also face barriers to voting due to inaccessible voting locations and methods. Federal, state and territory electoral laws allow for people with intellectual disability and/or psychiatric impairment to be arbitrarily excluded from voting, and these laws have been used to exert control over women with disabilities living in vulnerable situations.

**QUESTION FOR THE AUSTRALIAN GOVERNMENT**

⇒ What steps have Australian governments taken to reform voting locations and methods to remove barriers to access for women with disabilities?

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT all Australian governments (including local governments) build universal access principles into all aspects of election and voting policy and practice.

⇒ THAT all Australian governments fund leadership, development and mentoring programs specifically for women with disabilities and ensure the integration of women with disabilities into existing programs.

**ARTICLE 9: NATIONALITY**

**POSITIVE DEVELOPMENTS**

Since the change in Government in 2007, the Australia Government has made a number of key changes to refugee and asylum seeker policy, including:

- announcing a series of values underpinning detention policy, including that children and where possible their families would not be placed in an immigration detention centre, and that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time;
- closing down offshore processing centres on Nauru and Manus Island;
- abolishing the inhumane and punitive Temporary Protection Visa regime in favour of a Permanent Protection Visa regime;
- committing to improve immigration detention accommodation;
- exceeding the program target numbers for the 'Woman at Risk' special visa category in the humanitarian migration program;
- waiving of detention debts for the costs of holding an individual in immigration detention.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT the Australian Government be commended on its changes to the refugee and asylum seeker processing and accountability system, as well as its abolition of the Temporary Protection Visa regime.

**CHALLENGES**

**Suspension of processing applications for asylum**

In April 2010, the Australian Government temporarily suspended the processing of all applications for asylum from Sri Lankan and Afghan people, including women and children, and extended this ban for Afghan asylum seekers in July 2010. This removed procedural rights from Afghan and Sri Lankan asylum seekers on the basis of their nationality and also subjects them to arbitrary detention, and restriction of their freedom of movement and to proper health care and legal advice. The Australian Government and opposition have indicated that they are considering is now options for off-shore detention centres in other countries in the region, including East Timor.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT the Australian Government immediately remove the suspension on processing visa applications from asylum seekers from Afghanistan; and review its policies and procedures regarding asylum seekers to eliminate any discrimination in the visa application process.  
 ⇒ THAT the Australian Government abolish all mandatory detention of asylum seekers.

**Lack of information on women in immigration detention**

There is limited information available on gendered aspects of immigration detention and on the treatment of women in on-shore detention centres. The 2005 Palmer inquiry into the immigration detention of an Australian individual raised concerns about the treatment of women in immigration detention centres; however it is not clear what changes were implemented following this report.

**QUESTIONS FOR THE AUSTRALIAN GOVERNMENT**

⇒ What changes were implemented in response to the concerns expressed in the Palmer inquiry about the treatment of women in immigration detention?  
 ⇒ What steps has the Australian Government taken to implement contractual standards and accountability measures to meet the specific needs of women in immigration detention?

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT the Australian Government investigate the impact of immigration detention on women and address gender-based issues in its standards, protocols, training and procedures.

### **Women seeking protection and the issue of family violence**

Despite the Committee's 2006 Concluding Comments to Australia, women seeking protection are remaining in violent relationships due to limitations in Australian migration law to adequately protect them. Unlike in other visa streams, there is no provision for permanent residence for women who apply for refugee status as a member of a family unit that breaks down in the context of family violence (unless they have their own personal protection claim). In some cases, family violence may be a basis for protection under the Refugee Convention but claims are not raised in the application because family violence may not be perceived as a crime or relevant to refugee claims, or applicants may fear retribution or onerous burdens of proof. If claims for protection from family violence are not raised in the primary application, a woman who later raises her own claims for protection is at the mercy of ministerial discretion.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government undertake a detailed analysis of refugee claims of women in Australia and make disaggregated data on women's applications for protection visas publicly available.
- ⇒ THAT the Australian Government improve:
  - refugee processing procedures and immigration law so that claims of family violence can be easily made without having to rely solely on Ministerial intervention; and
  - migration law to enable women invoking protection obligations to be considered individually in situations of family violence in the absence of a personal claim.

### **Gender sensitivity in the refugee determination process**

The Australian Government has commenced updating its gender guidelines for the immigration department but the progress has been slow. While the Gender Guidelines are available to decision makers of refugee claims, they have no binding effect on decision makers and decision makers often only refer to them in a cursory manner or not at all.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government amend migration law to eliminate indirect discrimination against women applicants for protection and incorporate women's gender based harm into the refugee definition.
- ⇒ THAT the Australian Government update its Gender Guidelines to reflect best practice in handling the claims of refugee women, and ensure that decision-makers are mandatorily bound to determine claims and frame policy in accordance with the Gender Guidelines.

### **Family reunion**

Where a male member of a family has successfully gained asylum without his family, there is often a lengthy wait for the family living offshore (generally wife and children) to be processed and brought to Australia. There is significant stress placed on extended families left behind – particularly where there are children with disabilities, or where a sole parent with disability is left behind to care for children (a common concern in conflict zones and post-conflict communities). Further, the immigration department has adopted a narrow definition of 'immediate family member' under the offshore humanitarian split family provisions, which fails to acknowledge cultural practice of extended family support and ignores the realities of conflict in which this extended support and dependence is a matter of survival.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government amend protection claim procedures so that once a valid claim has been established, dependant family members of refugees are brought to Australia as soon as possible, with any necessary further visa processing carried out onshore in Australia.
- ⇒ THAT the Australian Government expand its definition of 'immediate family member' in the offshore humanitarian split family provisions.

## ARTICLE 10: EDUCATION

### POSITIVE DEVELOPMENTS

- The Australian Government introduced proposed amendments to Higher Education legislation, which require the provision of some level of student support services on campus in consultation with students.
- The Council of Australian Governments committed to reducing the disadvantage gap between Aboriginal and Torres Strait Islander and non-Indigenous Australians.
- The Australian Bureau of Statistics noted an increase in high school student retention rates for Aboriginal and Torres Strait Islander students.

### CHALLENGES

#### Access to education opportunities for rural girls and women

Whether it is due to poor standards of teaching in a particular local school, or the lack of access to post-compulsory secondary education, many women and girls in rural and remote areas, including Aboriginal and Torres Strait Islander women and girls, are forced to leave their communities to access educational opportunities. The cost of doing so, and the lack of resources and support for women and girls outside their communities, prevents many women and girls from pursuing education.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government provide support to women living in rural and regional Australia to access quality education opportunities and minimise the need to move away from their communities and increase community capacity building.

#### Vocational and educational training outcomes

Accessible, affordable and relevant vocational education and training (VET), along with person centred career counselling, is of high significance for women seeking to enter or re-enter the paid workforce. This is especially so for those with limited qualifications, work experience and labour force attachment. Data indicate that women are less likely to drop out once enrolled, but have poorer employment outcomes. This points towards the fact that the VET system is not adequately serving the interests of female students; and bears particularly heavily on disadvantaged students for whom VET should offer a way out of the poverty trap. Women and young girls are not visible in the VET system, and are not being catered for on an equitable basis.

#### QUESTION FOR THE AUSTRALIAN GOVERNMENT:

⇒ Will the Australian Government implement budgetary and policy mechanisms to reduce the structural financial pressures of vocational and education training studies?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government and State and Territory governments update and implement a national vocational education and training policy for women as a matter of priority.
- ⇒ THAT the Australian Government undertake a gender analysis and make data available on the performance of the national vocational and education training system as a matter of urgency.

#### Aboriginal and Torres Strait Islander women and children

*Provision of early childhood and education* for children in Aboriginal and Torres Strait Islander communities is extremely inadequate. People in remote areas are particularly disadvantaged as there are often not enough trained staff to provide the services. Although the Australian Government has committed to improve early childhood education, women report this is likely to be a challenge because many communities have insufficient school teaching staff, let alone early childhood staff.

*At school*, Aboriginal and Torres Strait Islander children:

- have lower levels of literacy and numeracy – the Productivity Commission found that three times as many Aboriginal and Torres Strait Islander children fail to reach minimum standards for reading, writing and numeracy in year 3, with the gap increasing in later years;
- are less likely to attend school regularly for a variety of social and economic reasons related to entrenched discrimination and disadvantage;
- are half as likely as non-Indigenous students to complete secondary school;

Access to mainstream schools does not adequately address cultural and language issues for Aboriginal and Torres Strait Islander children.

As with many statistics, those on numeracy, literacy and attendance have only been disaggregated by sex or race, not both. So specific statistics on Aboriginal and Torres Strait Island girls are not available.

*Aboriginal and Torres Strait Islander languages*: The Northern Territory Government has introduced a new policy requiring the first four hours of education in schools to be conducted in English. According to the UN Educational, Scientific and Cultural Organization, more than 100 languages in Australia are in danger of extinction. Given the central importance of language to the maintenance of cultures and customs, the policy of forcing education in schools to be conducted in English has the potential to seriously threaten the existence of many Aboriginal and Torres Strait Islander languages.

*Young mothers*: Aboriginal and Torres Strait Islander women often become mothers at a younger age than other Australians. Many women are unable to finish secondary school or continue on to further education because of a lack of affordable childcare.

*Post-school education*: In 2007, only 26% of Aboriginal and Torres Strait Islander people had a qualification past year 12, compared to 53% of non-Indigenous people. Aboriginal and Torres Strait Islander women are also more likely than Aboriginal and Torres Strait Islander men to be neither employed nor studying. Barriers to continuing education past school include fees, child care costs and the availability and inadequacy of student support payments for women providing for a family.

*Extreme racism in schools and other educational institutions*: Aboriginal and Torres Strait Islander women report that they and their children experience extreme racism in schools and universities, both from other students, and from teachers who on occasion are culturally ignorant, racist, and ill-equipped to teach Aboriginal and Torres Strait Islander students.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT all Australian governments develop a national strategy for increasing the numbers of Aboriginal and Torres Strait Islander people employed in the education sector and provide appropriate training and development in a culturally sensitive manner.
- ⇒ THAT all Australian governments take positive and necessary measures to ensure that Aboriginal and Torres Strait Islander people enjoy the right to identity and culture, including the maintenance and use of their traditional languages.
- ⇒ THAT the Australian Government support and fund community programs to assist young Aboriginal and Torres Strait Islander to stay at school.

## ARTICLE 11: EMPLOYMENT/WORK

### POSITIVE DEVELOPMENTS

- Australia has introduced its first paid parental leave scheme, which will provide the primary carer (subject to an income test and a work test) with 18 weeks post-natal leave, paid at the adult federal minimum wage.
- The Australian Government established a new industrial relations system (from 'WorkChoices' to 'Fair Work Australia') in which individual statutory contracts are phased out and unfair dismissal rights and minimum standards of employment are strengthened, which will somewhat mitigate the marginalisation of female employees.

### RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government be commended on introducing a paid parental level scheme and recommend that superannuation, leave for fathers, an extended period of paid leave and an increased level of payment be introduced after the two year review.

### CHALLENGES

#### Pay equity

Disturbingly, the gender pay gap is increasing, with women earning 82 cents in the male dollar (the biggest gap since 1994). A 2009 parliamentary inquiry into the pay equity gap for women, *Making it Fair*, recommended numerous changes to the *Fair Work Act* and the *Sex Discrimination Act*, including establishing a Pay Equity Unit to focus approaches to address the gender pay gap. A review of the Equal Opportunity for Women in the Workplace Agency has also been undertaken. The Government is yet to respond to both reviews.

*Flexible working conditions:* The *Fair Work Act* introduced ten National Employment Standards which provide minimum standards of employment relating to, among other things, maximum weekly hours of work, the ability of parents to request flexible working arrangements, redundancy entitlements and leave. However, shortcomings in the Act mean it does not provide comprehensive protection to fair and equal conditions of employment, for example, employers may still require their employees to work 'reasonable additional hours' (which is not an improvement on Work Choices).

*Childcare:* The lack of available and affordable childcare is impacting negatively on women's workforce participation. The Australian Government failed to build 260 childcare centres across Australia, as promised in 2007, and has revised its commitment to just 38 new centres. The funding of all forms of child care – day care, out of school hours and vacation care – must be reviewed to ensure that a transparent and equitable approach to financing childcare is developed, and so that a comprehensive childcare policy is developed for children from young infants up to high school age.

*Taxation system:* The consideration in Australia's Future Tax System Review of the impact of caring on women's workforce participation was welcome. However, before recommendations are implemented, a thorough gender analysis must be undertaken to ensure that they will in fact increase women's economic equality and security and not have unintended negative impacts on women and children.

*Retirement incomes:* Pay inequity leads to a long-term disparity in wage-earning power and consequently a disparity in the retirement incomes of women and men. Australia has a compulsory retirement savings scheme, to which percentage-based contributions are made from the income of all employees. Overall, men in each age group throughout each time period have had a higher proportion of large superannuation balances compared with women.

*Lower workforce participation rate of women with disabilities:* Australians with disabilities are much less likely to be employed than people without disabilities. Barriers to entering employment for women with disabilities include a lack of understanding of the complexity and nature of disability, lack of access to education and training, inaccessible and unresponsive employment services, and poor job design and inflexible working arrangements.

RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government take steps to address gender pay inequity, including:
  - implementing and funding the recommendations of the pay equity report, *Making it Fair*, and responding to the review of the Equal Opportunity for Women in the Workplace Agency;
  - strengthening the right to flexible working conditions in the *Fair Work Act* and National Employment Standards;
  - conducting a thorough gender analysis of the taxation system and reforming the system to reduce the gender pay gap and improving the economic well being of women, including through improving Age Pension and superannuation options; and
  - developing a comprehensive childcare policy, which includes out of school hours and vacation care, and referring the development of a more transparent and equitable approach to financing childcare to the Productivity Commission for review.
- ⇒ THAT all Australian governments adopt initiatives to address underlying structural barriers to workforce participation, with the purpose of increasing employment participation of:
  - women with disabilities
  - Aboriginal and Torres Strait Islander women; and
  - culturally and linguistically diverse women.

**Workplace bullying and sexual harassment**

A report by the Australian Human Rights Commission found that one in five women are subject to sexual harassment in the workplace. Sex Discrimination Commissioner Elizabeth Broderick said the Commission's research revealed 'a significant lack of understanding, among both women and men, about what behaviours constitute sexual harassment'. The report, *Sexual Harassment: Serious Business*, contains a range of recommendations aimed at prevention, reporting and monitoring, better legal protection, and better support for victims.

RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT all Australian governments and other relevant public and private authorities fully implement the recommendations contained in the October 2008 report of the Australian Human Rights Commission, *Sexual Harassment: Serious Business*.

**Aboriginal and Torres Strait Islander women**

*High unemployment:* Unemployment rates for Aboriginal and Torres Strait Islander women remain unacceptably high and discrimination, lack of education and opportunities are very real barriers to employment. The unemployment rate for Aboriginal and Torres Strait Islander people in 2006 was 16% compared to 5% for non-Indigenous people, with women having a slightly higher unemployment percentage than men. In 2007, the employment rate for Aboriginal and Torres Strait Islander women was 47.9% compared to 65.1% for Aboriginal and Torres Strait Islander men.

*High levels of unpaid and volunteer work:* Aboriginal and Torres Strait Islander women do huge amounts of unpaid work as carers for children, relatives with disabilities, and elderly relatives. There are frequently no alternatives for the provision of these services in communities. Unpaid work is essential to the continued functioning of many communities, but is rarely acknowledged or financially recognised. The burden of unpaid work greatly diminishes the capacity for Aboriginal and Torres Strait Islander women to participate in paid work and community leadership roles.

*Retirement income:* Life expectancy for Aboriginal and Torres Strait Islander women means that women are unlikely to be eligible for aged pension or retirement income schemes.

RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government give consideration to a census approach, similar to the model used in New Zealand, to investigate the levels of unpaid and volunteer work amongst Aboriginal and Torres Strait Islander women.
- ⇒ THAT the Australian Government take steps to implement a system to ensure that access to the Age Pension and superannuation is available to Aboriginal and Torres Strait Islander women at an age that matches their life expectancy and guarantees a comparable period of life to be devoted to retirement activities.



**POSITIVE DEVELOPMENTS**

- The Australian Government has committed to developing a new National Women’s Health Strategy.
- The Australian Women’s Health Network Aboriginal Women’s Talking Circle launched its first *National Aboriginal and Torres Strait Islander Women’s Health Strategy* in May 2010. The Australian Government said it will consider the strategy’s findings when developing future policy.

**RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS**

⇒ THAT the Australian Government be commended for its commitment to a new National Women’s Health Strategy, and that it incorporate the recommendation of the Aboriginal Women’s Talking Circle into its health and closing the gap policies.

**CHALLENGES**

**Aboriginal and Torres Strait Islander women**

Aboriginal and Torres Strait Islander people have higher levels of ill health, disease and death rates across all age groups:

- life expectancy at birth for Aboriginal and Torres Strait Islander women is 72.9 years of age compared with 82.6 years for non-Indigenous women;
- almost one quarter of people in rural Aboriginal and Torres Strait Islander communities may be infected by sexually transmissible infections;
- chronic disease (cardiovascular disease, kidney problems and diabetes), injuries and respiratory infections account for 75% of the life expectancy gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians;
- Aboriginal and Torres Strait Islander people have cataracts and either complete or partial blindness at higher rates than non-Indigenous people;
- Aboriginal and Torres Strait Islander women do not have access to primary health care programs due to a lack of local access, with most health services tending to focus on problems of acute care.

On 11 February 2010 the Close the Gap Steering Committee for Indigenous Health Equality’s *Shadow Report on the Australian Government’s progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians* was released. The report found that while the Government had taken some positive steps in putting in place a number of national agreements to address Indigenous health, the Government has no comprehensive long-term plan (with measurable targets) to close the gap on Aboriginal and Torres Strait Islander health inequality by 2030 despite its commitment to this goal.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government respond to and implement the recommendations of the Close the Gap Shadow Report.
- ⇒ THAT the Australian Government ensure access to primary health care, appropriate housing, adequate sanitation and reliable supplies of clean water, and fresh food for Aboriginal and Torres Strait Islander communities.
- ⇒ THAT the Australian Government ensure that the health measures in the 'Closing the Gap' package ensure that Aboriginal and Torres Strait Islander women’s health programs and outcomes are improved, including by collecting data disaggregated by sex, ethnicity, ability, age and geographical location.
- ⇒ THAT the Australian Government allocate additional funds to recruit and train sufficient health care workers for all Aboriginal and Torres Strait Islander women to have access to medical services.

## Women from different population groups

*Women with disabilities* have reported difficulty accessing mainstream health services, such as preventative breast and cervical screening, due to:

- inadequate policy frameworks which do not consider women with disabilities as a target group;
- the physical inappropriateness of the medical equipment used;
- costs; and
- the manner in which these procedures are performed.

*Women from culturally and linguistically diverse backgrounds* have reported challenges in accessing health information in their language and interpreters for use in accessing health services. They have also reported a lack of cultural sensitivity and discrimination when accessing health services.

*Lesbians*: While there have been significant changes to health legislation to include lesbian relationships, the design of health policy continues to impact greatly upon lesbians' access to health care. Lesbians have much higher risks of mental health issues than heterosexual women. They are also less likely to seek routine health care due to stigma and discrimination, which can lead to some illnesses, such as breast and cervical cancer, being diagnosed at an advanced stage when treatment options are limited.

*Women living in rural, regional and remote areas* have reported a range of access issues for general and specialist health services, including difficulty in accessing mental health services, bulk billing services, medical practitioners, medical services, sexual health information and maternity services.

### RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government ensure that the National Women's Health Policy, and its other health programs, policies and research, are sensitive to the particular health needs and risks of women with disabilities, women from cultural and linguistically diverse backgrounds, lesbians and women living in rural, regional and remote areas.
- ⇒ THAT all Australian governments ensure health services, resources and policies are inclusive and accessible by:
  - targeting resource allocation to build the capacity of health services to respond to the needs of women with disabilities, women from culturally and linguistically diverse backgrounds, lesbians and women living in rural, regional and remote areas; and
  - ensuring services are physically and geographically accessible, information materials are in accessible formats and languages, adequate funding for interpreters is available, and training is provided to service providers to ensure that they are able to respond to the different health needs of different groups of women.
- ⇒ THAT the Australian Government increase bulk-billing rates in rural, regional and remote areas, develop strategies to attract medical specialists and health care workers to these areas, and address the crisis in maternity care services.

## Mental health

Gender and women's specific health needs are generally invisible in key Australian public health policies, including those relating to mental health. Mental disorders are a leading disease group among women, especially depression and anxiety. Further, depression in women tends to be under-diagnosed, and treated differently – in undergoing treatment for depression, women are significantly more likely to be prescribed antidepressant drugs, sleeping pills and vitamins. A 2008 parliamentary inquiry into mental health services made two key recommendations with gendered implications: that a taskforce be convened to assess the relationship between the experience of childhood sexual assault and the development of mental illness and to guide the implementation of programs for adult survivors; and that Australian governments jointly support a national Borderline Personality Disorder initiative.

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government be encouraged to design a system of mental health infrastructure that is gender-sensitive in consultation with consumers, women's health services and specialists.
- ⇒ THAT the Australian Government particularly adopt the recommendations of the Senate Standing Committee on Community Affairs that relate to women's mental health concerns.

## Reproductive rights

In Australia, more than 80,000 women access termination of pregnancy services each year. The legal regime that applies to termination of pregnancy is complex and varies between state and territory jurisdictions. This creates confusion both in the medical sector, and the wider community as to the legal status of abortion. A young Queensland couple are presently facing charges under a 111 year old law for attempting to procure an abortion, and supplying drugs to procure an abortion, after allegedly importing and using the abortion drug RU486. Access to abortion varies greatly depending on geographic location and is also limited by financial constraints.

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT all State and Territory governments decriminalise abortion, and move to adopt harmonious laws related to termination of pregnancy across jurisdictions.
- ⇒ THAT the Australian Government increase funding for termination of pregnancy, to address the growing gap between the Medicare Rebate and the cost of service provision, including through increasing the level of rebate available through the Medicare system.
- ⇒ THAT all Australian governments examine schemes to address the barriers to access of sexual health services and education faced by women in rural, regional and remote areas.

## ARTICLE 13: ECONOMIC AND SOCIAL RIGHTS

### POSITIVE DEVELOPMENTS

- An unprecedented increase to most pension payments was introduced in the 2009-10 Australian Government Budget.
- A new welfare payment was introduced in June 2009 for almost 500,000 carers across Australia.
- The Australian Government recognised and prioritised the urgent need to curb homelessness, and recognised family violence as the major cause of homelessness for women.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government be commended for the significant boost to various pension payments, and the introduction of the Carer Supplement.
- ⇒ THAT the Australian Government be commended on addressing homelessness as a national priority.

### CHALLENGES

#### Compulsory income management

In June 2010, compulsory income management was extended to apply to welfare recipients across Australia. It has applied to Aboriginal recipients in the Northern Territory since 2007. Under compulsory income management, half the fortnightly payments for people on certain types of income support are earmarked for essentials like food, bills, clothes and rent and available for use on a designated social security card. The compulsory income management scheme is a major change to the Australian welfare system that has occurred without sufficient evidence that the scheme will overcome disadvantage.

Of particular concern is that the scheme now applies to 'vulnerable' people who live in a designated area and this will include women who are in financial stress, homeless, disabled, carers, experiencing domestic violence or with mental health issues. This may result in women being reluctant to seek emergency financial relief or access homelessness or domestic violence services in case income management will apply to their payments. While income management can assist people manage their budgets, it should be a choice made by individuals or communities.

#### RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government halt its compulsory income management scheme and ensure that any income management scheme is voluntary, developed in consultation with affected communities and part of a broader strategy to improve pathways out of poverty, social exclusion and unemployment.

#### Sole parents and parenting welfare payments

A 2008 OECD report found that the risk of poverty for Australian single parents is 70%. As women comprise 87% of sole parents in Australia, the risk of poverty disproportionately affects women. Parenting payments for sole parents, called 'Parenting Payment Single', are still inadequate in supporting the needs of women as sole parents, who make up 95% of the recipients of this payment. Unlike other pensions, parenting payments were not increased in the 2009-2010 Australian Government Budget. The needs of women and sole parents are not being met by the current parenting payments. In April 2009, the maximum amount a sole parent could receive was only \$569.80 per fortnight, while a partnered parent can receive \$409 per fortnight with the benefit of a second income in the family.

Aboriginal and Torres Strait Islander families have a significantly higher rate of being single parent families (38%) compared with the overall proportion of single-parent families in Australia (16%). Women with disabilities are also disproportionately affected as they make up approximately 20-25% of the total number of sole parent pensioners.

RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government urgently address the exclusion of sole parents and single mothers from participation in socio-economic life, including through increasing the Parenting Payment Single in line with other pension increases.

**Equitable access to services for women with disabilities**

Significantly more funding for disability support services is allocated to services that benefit men with disabilities than women. The key factor contributing to this outcome is a focus on supporting certain types of disability – namely, those defined as ‘high and complex needs’. As disability characteristics in women tend to be chronic, long-term and degenerative, the type of supports women may require (which may be comparatively minor) are being missed through the current funding structures.

RECOMMENDATION PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT all Australian governments ensure that disability funding frameworks do not result in the allocation of more funding to services benefitting men with disabilities than to services benefitting women with disabilities.

**Housing**

More than one in two people experiencing homelessness who seek accommodation from relevant services are turned away *every day*, due to lack of beds. Some groups have more difficulty accessing new accommodation. For example, families are more likely to be turned away than single people. This raises concerns about equality of access to public housing services, particularly in relation to single women with children.

Women report severe shortages in the availability of private rental and long waiting lists for public housing across Australia. Women also report being discriminated against – including on the basis of number of children, disability, source of income (ie, welfare payments) and race – in obtaining public housing and private rental. Particular problems for older women who leave a marriage or relationship later in life in accessing affordable housing with little or no asset base, and the potential for vulnerability of these women, is compounded by mobility and health issues. Women with disabilities also face additional problems due to the lack of accessible public housing and private rental accommodation.

Aboriginal and Torres Strait Islander women also report experiencing racial discrimination when trying to get housing. With public housing, discrimination may come from neighbours, individual housing authority staff and through the application of departmental policy. Similarly, women report experiencing overt racism when applying for private rental accommodation, making it impossible for them to find suitable private rental housing and are also further disadvantaged through the low socio-economic status that they experience.

Some Aboriginal and Torres Strait Islander women, especially those in remote areas, continue to live in poor quality, substandard housing that endangers their health. There are still some dwellings in Aboriginal and Torres Strait Islander communities not connected to essential services. In 2006 there were 51 dwellings in communities not connected to an organised sewerage system, 85 not connected to an organised electricity supply and 10 not connected to an organised water supply.

RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT all Australian governments commit to increase funding, access and availability to various forms of supported housing and accommodation, particularly housing which meets the needs of women with children, women with disabilities, women experiencing mental illness and older women.
- ⇒ THAT State and Territory governments review de facto and de jure discriminatory practices in the public housing programs, and develop community education programs to address discriminatory practices in the private rental markets.
- ⇒ THAT the Australian Government ensure that Aboriginal and Torres Strait Islander women are consulted on any housing policies affecting them to ensure culturally appropriate housing policies are developed.

## ARTICLE 15: EQUALITY BEFORE THE LAW

### POSITIVE DEVELOPMENTS

The Australian Government has increased funding of legal assistance programs, including Aboriginal and Torres Strait Islander women's legal services.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government be commended for increasing funding of legal assistance programs and be called upon to further increase the ongoing funding to such services to meet the legal needs of women who are disadvantaged in their access to justice.

### CHALLENGES

#### Women's access to justice

*Generally:* Despite recently increased funding for legal assistance programs, the legal aid and community legal sector remains severely under-funded and resourced, which has profound implications for women's access to justice. The report of a 2009 parliamentary inquiry into access to justice made urgent recommendations for reform that were largely around funding and incentives for the legal aid and community legal sector. If implemented, the recommendations would increase women's access to justice. This inquiry was the latest in a number of unimplemented inquiries into the issue, including a similar 2004 inquiry.

*Aboriginal and Torres Strait Islander women:* Aboriginal and Torres Strait Islander women's access to justice is severely compromised, including justice in relation to family violence and sexual assault. Aboriginal and Torres Strait Islander women are the most legally disadvantaged group in Australia, with Aboriginal and Torres Strait Islander legal services primarily providing services to men. Despite improvements, such as the introduction of specific Aboriginal and Torres Strait Islander family violence prevention legal services, significant disadvantage still exists including limited access to legal and interpretive services. A new National Indigenous Law & Justice Framework has recently been endorsed by the Australian Government and State and Territory governments but is yet to be implemented. Aboriginal and Torres Strait Islander women need to be properly represented on the National Indigenous Law and Justice Advisory Body associated with the Framework to ensure coordinated and effective law reform and policy development.

#### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

- ⇒ What steps have been taken to implement access to justice inquiry reports?
- ⇒ Will the Government conduct a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of the needs of rural, regional and remote communities and women?
- ⇒ What steps have been taken to implement the National Indigenous Law & Justice Framework? Will the National Indigenous Law and Justice Advisory Body include adequate representation of Aboriginal and Torres Strait Islander women?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government implement the 2004 & 2009 Access to Justice Inquiry reports.
- ⇒ THAT the Australian Government conduct a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of the needs of rural, regional and remote communities and women.
- ⇒ THAT the Australian Government adequately fund and resource Aboriginal and Torres Strait Islander's women's legal services in all states and territories across Australia.
- ⇒ THAT the Australian Government ensure Aboriginal and Torres Strait Islander women are properly represented on the National Indigenous Law and Justice Advisory Body to ensure coordinated law reform and policy development.
- ⇒ THAT the Australian Government increase the availability of translating and deaf interpreting services for Aboriginal and Torres Strait Islander women to increase their access to justice.

## Women in prisons

*Generally:* There is ongoing discrimination against women (including sex and race discrimination and discrimination on the basis of cognitive, mental and physical impairments) in prison and infrastructure and processes. Fewer rehabilitation, education and training opportunities exist for women prisoners than for men, with implications for post-release. Female prisoners are more likely than male prisoners to be primary caregivers, to have been unemployed prior to sentencing, to have mental health problems, to have experienced high levels of addiction, and to have suffered domestic violence and sexual abuse in the past. There are inadequate protocols and policies for arresting and incarcerating parents with dependent children.

*Aboriginal and Torres Strait Islander women:* There has been a huge rise in imprisonment rates for Aboriginal and Torres Strait Islander women, increasing by **46 per cent** between 2000 and 2008. Aboriginal and Torres Strait Islander women are 22 times more likely than non-Indigenous women to be in prison. The imprisonment rate is occurring in the context of intolerable levels of family violence, over-policing of selected offences, ill health, unemployment and poverty. There is a lack of research into the causes of and strategies to address the disproportionately high imprisonment rates for Aboriginal and Torres Strait Islander women, which must be examined and addressed in the context of Aboriginal and Torres Strait Islander women's access to justice generally.

*Women with disabilities:* There is an overrepresentation of women with disabilities in Australian prisons, particularly women with intellectual and psychiatric disability.

### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

- ⇒ What is the Australian Government doing to address the alarming rise in imprisonment rates for Aboriginal and Torres Strait Islander women?
- ⇒ What is the Australian Government doing to address the significant overrepresentation of women with disabilities, particularly with intellectual and psychiatric disability, in prison?

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT all Australian governments, and relevant statutory authorities, examine allegations of discrimination in prison systems in Australia and introduce the necessary reforms to eliminate discriminatory practices, including:
  - implementing consistent policies addressing the needs of incarcerated mothers where they have dependent children, in particular by considering alternative sentencing options such as the suitability of home detention, periodic detention or community-based orders; and
  - undertaking a comprehensive analysis of increased imprisonment rates for women and develop strategies to address social, political and economic factors that are contributing to incarceration rates.
- ⇒ THAT the Australian Government and State and Territory governments work collaboratively to develop a national, comprehensive framework to address the over-representation of women with disabilities in the criminal justice system.

## ARTICLE 16: EQUALITY IN FAMILY RELATIONSHIPS

### POSITIVE DEVELOPMENTS

The Australian Government has:

- provided separating de facto couples, including same-sex couples, access to the Federal family law courts for disputes about property; and
- removed discrimination against same-sex couples in relation to financial and work-related benefits and entitlements.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government be commended for providing separating de facto couples access to the Federal family law courts for disputes about property.
- ⇒ THAT the Australian Government be commended for removing discrimination against same-sex couples in relation to financial and work-related benefits and entitlements.

### CHALLENGES

#### Safety of women and children after separation – family law issues

The *Family Law Act* needs to be amended to better protect the safety of women and children. Reforms made to the *Family Law Act* in 2006 were intended to help separating parents make arrangements for the care of their children more cooperatively, placing a greater emphasis on the role of both parents in a child's life. However, three major government-commissioned reports into the 2006 reforms ('Family Law Reform Reports') show that the Australian family law system is failing to respond effectively to issues of family violence and keep women and children safe, including a finding that shared care and decision-making arrangements are being made in some cases where there is a history of family violence and that this has resulted in worse outcomes for children. Women are also being deterred from reporting family violence in the family law context because of the cost implications in the Family Law Act for cases involving false allegations of family violence.

#### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

- ⇒ What steps are being taken to implement the key recommendations from the three Family Law Reform Reports and to better protect the safety of women and children in the family law system?
- ⇒ Will the Australian Government immediately repeal the false allegations provision in the *Family Law Act*?

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government implement the key recommendations from the three Family Law Reform Reports and increase funding for key services in the family law system (such as contact centres, legal aid, community legal centres, family law consultants and the family courts) to better protect the safety of women and children in the family law system.
- ⇒ THAT the Australian Government repeal the false allegations provision in the Family Law Act as a matter of priority.



## Child protection

*Aboriginal and Torres Strait Islander women:* Aboriginal and Torres Strait Islander children are significantly over-represented in the care and protection systems of all jurisdictions. In 2007-08, Aboriginal and Torres Strait Islander children were nine times more likely to be in out-of-home care than non-Indigenous children. The ongoing removal of Aboriginal and Torres Strait Islander children perpetuates a cycle that spans generations of removing children from their families and communities. Practical and positive strategies to protect children at risk need to be developed in genuine consultation and dialogue with Aboriginal and Torres Strait Islander women.

*Women with cognitive impairments:* Parents with disabilities, particularly mothers with intellectual disability and mothers with psychosocial disability, are significantly over represented in the child protection system, partly due to prejudice about their parenting capacity. One out of six children in out-of-home-care has a parent with disability. When appropriate family support programs and community-based mental health services are provided to parents with disabilities, outcomes for their children are not significantly different from other children. However, there is only one such service in Australia and no current plans to implement more.

### QUESTIONS FOR THE AUSTRALIAN GOVERNMENT

- ⇒ What is the Australian Government doing about the significant overrepresentation of Aboriginal Torres Strait Islander children in the care and protection systems?
- ⇒ What is the Australian Government doing to recognise women with disabilities as parents and support them to do so?

### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government seek the advice of Aboriginal and Torres Strait Islander women to review the statutory child protection mechanisms as they affect Aboriginal and Torres Strait Islander children, to halt the damage being done by the existing regime.
- ⇒ THAT the Australian Government commit to working with State and Territory governments to establish, and recurrently fund, a National Resource Centre for Parents with Disabilities that recognises that women with disabilities have the right to be parents by focusing on:
  - pregnancy and birthing, adoption, custody, assisted reproduction, adaptive baby care equipment;
  - specific programs to support parents with disabilities to retain their children within their own family homes; and
  - barriers to reproductive autonomy and procreative choice.

**POSITIVE DEVELOPMENTS**

The Australian Government has:

- created a National Council and Plan to Reduce Violence Against Women and Children and committed to implement most of the priority actions in the Council's *Time for Action* report; and
- recognised the links between homelessness and family violence and has committed to a comprehensive approach to address homelessness.

Other positive developments:

- the White Ribbon Campaign which aims to end violence against women through a range of innovative strategies has grown and now has a significant national profile;
- the Victorian Government has undertaken significant and integrated work across a range of sectors to reduce violence against women; and
- the New South Wales Government has introduced legislation into Parliament to establish a multi-disciplinary and multi-agency Domestic Violence Death Review Team.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government be commended on the creation of a National Council and Plan to Reduce Violence Against Women and Children, the delivery of the National Plan and its commitment to implement most of the priority actions.
- ⇒ THAT the Australian Government be commended its formal recognition of the links between homelessness and family violence and the steps taken to address this.

**CHALLENGES**

**High rates of violence against women in Australia**

High rates of violence against women remain a major issue, with almost one in three Australian women experiencing physical violence and almost one in five women experiencing sexual violence in their lifetime. Aboriginal and Torres Strait Islander women and women with disabilities experience violence at much higher rates and are more likely to experience sexual violence and to sustain injury. Violence against women was estimated to have cost the Australian community \$13.6 billion in 2009.

The National Council to Reduce Violence Against Women and Children delivered its report in April 2009 but the Australian Government has yet to implement fully a National Plan to Reduce Violence against Women and Children.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government implement and adequately fund a National Plan to Reduce Violence Against Women and Children, based on the National Council's report and including a mechanism for independent monitoring, as a matter of priority.

**Intersection of family violence, child protection and family law jurisdictions**

Many women face difficulties in escaping violence and maintaining their family due to the lack of coordination between the family, family violence, criminal and child protection jurisdictions. As recommended in the National Council to Reduce Violence Against Women and Children's *Time for Action* report, in July 2009 the Australian Government established an inquiry to examine the complex interrelationship of federal and state/territory laws and legal processes and to consider improvements that could be made to protect women and children from family violence. The inquiry, which is being conducted by the Australian Law Reform Commission and the NSW Law Reform Commission, is due to be released on 31 July 2010.

**RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government act to ensure better integration across the child protection, family violence and family law jurisdictions.

### Family violence homicide review processes

To better prevent family violence homicides, these deaths need to be viewed in connection with each other and not as isolated, unrelated deaths. The context in which family violence deaths occur and the responses provided by a range of services and organisations must be examined to identify risk factors, barriers to effective intervention and gaps in service delivery or in the integration of responses. The State of Victoria has a family violence review panel and the State of New South Wales has introduced legislation to establish one. The establishment of review processes in all states and territories would greatly enhance efforts made to monitor, evaluate and improve responses to family violence and prevent death.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government work with State and Territory governments to implement family violence homicide review processes.

### Violence against Aboriginal and Torres Strait Islander women

*Generally:* Aboriginal and Torres Strait Islander women experience horrific levels of violence and are 35 times more likely to be hospitalised as a result of spouse or partner violence than non-Indigenous women. Violence against Aboriginal and Torres Strait Islander women is affected by a number of factors including racism, dispossession, disadvantage and poor living conditions.

*Mandatory reporting:* Since 2009 health professionals in the Northern Territory have been forced to report domestic and family violence to the police, which disproportionately affects Aboriginal women. There are concerns that mandatory reporting does not improve victim safety, that victims may not seek medical treatment to avoid mandatory reporting, that some health workers lack the experience or are reluctant to meet their obligations, and that police lack capacity or willingness to investigate all reported cases.

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

- ⇒ THAT the Australian Government, in implementing the National Plan, address violence against Aboriginal and Torres Strait Islander women in urban, rural, remote and areas.
- ⇒ THAT the Australian Government fund culturally-appropriate Aboriginal and Torres Strait Islander women's legal services across Australia, including in urban, rural and remote areas, to assist victims of sexual assault and family violence.
- ⇒ THAT the Northern Territory Government remove the obligation on health professionals for mandatory reporting of domestic and family violence provisions to police.

### Violence against women in rural and remote areas

There is limited access to family violence and sexual assault services for Australian women living in rural and remote areas. Sexual assault victims from rural and remote may need to travel hundreds of kilometres for forensic examinations, leading to added trauma and discouraging rural and remote women participating in the forensic process, implications for charge and conviction rates. *Violence against Aboriginal and Torres Strait Islander women in rural and remote areas is also discussed below.*

#### RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS

⇒ THAT the Australian Government take steps to increase access to family violence and sexual assault services for women in rural and remote areas.

### **Violence against women with disabilities**

Violence against women with disabilities, particularly cognitive disability, often goes undetected, unreported or uninvestigated. Abuse and violence against women with disabilities is common in group residential settings or supported accommodation where there is a wide range of possible perpetrators including caregivers, support workers and service providers. Violence in these settings needs to be seen in the family law violence context. Violence against women with disabilities is also prevalent in community settings. Yet there is a lack of access to appropriate services, including crisis accommodation, for women with disabilities which may prevent them escaping a violent situation or rebuilding their lives after doing so. Non-therapeutic sterilisation of people with disabilities remains an ongoing practice in Australia and impacts most significantly on the rights of women and girls with disabilities. The Australian Government has moved away from banning this grave human rights abuse despite UN recommendations to do so and despite a court in the State of Queensland recently ordering the non-therapeutic sterilisation of an 11 year old girl. Draft legislation was shelved in 2007.

#### **RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government address, as a priority, the abuse and violence against women with disabilities living in institutions and supported accommodation and ensure that accessible and appropriate services are available.
- ⇒ THAT the Australian Government enact national legislation prohibiting, unless there is a serious threat to life or health, the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities in the absence of their fully informed and free consent.

### **Violence against lesbian, bisexual, transgender, transsexual and intersex people**

Heterosexist violence is common and often goes unreported, despite 19 per cent of anti-lesbian violence requiring medical treatment. More than a third of women identifying as lesbian, bisexual, transgender, transsexual or intersex have been in a relationship where their partner abused them, which often goes unacknowledged by national anti-violence strategies.

#### **RECOMMENDATIONS PROPOSED FOR CONCLUDING OBSERVATIONS**

- ⇒ THAT the Australian Government, in implementing the National Plan, address heterosexist violence and intimate partner violence experienced by lesbian, bisexual, transgender, transsexual or intersex people.