



3 November 2011

Attorney-General's Department
Human Rights Engagement Section
Robert Garran Offices
BARTON ACT 2600

Email: humanrights@ag.gov.au

Dear Human Rights Engagement Section,

Australia's Fifth Report under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. Women's Legal Services NSW (WLS NSW) welcomes the opportunity to comment on the CAT Committee's 'List of Issues Prior to Reporting' (LOIPR). Our submission focuses primarily on domestic violence affecting women.
2. In general, Australia report on its implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) should include improvements that Australia has made in this area, but it should also identify gaps and areas for improvement in Australia's implementation. The report should also build on the reports and reviews of Australia under other international human rights mechanisms, such as the Universal Periodic Review (UPR) and Australia's 2010 review under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
3. The following issues affecting women should be given prominence in Australia's next report to the United Nations Committee on Torture:
 - domestic violence against women (LOIPR paragraph 13);
 - overrepresentation of Aboriginal and Torres Strait Islander women in prisons (LOIPR paragraph 28); and
 - accessibility of culturally appropriate legal aid and justice services adapted especially for Aboriginal and Torres Strait Islander women in remote areas (LOIPR paragraph 37).

Further detail on these topics and specific areas of priority is included below.



Women's Legal Services NSW PO Box 206 Lidcombe NSW 1825

Administration: (02) 8745 6900 Fax: (02) 9749 4433 Website: www.womenslegalnsw.asn.au

Women's Legal Resources Limited ACN: 002 387 699 ABN: 88 002 387 699

About Women's Legal Services NSW

4. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice. WLS NSW formed particularly for women who are disadvantaged by their social and economic circumstances.

Domestic Violence against Women (LOIPR para 13)

5. Violence against women is a persistent and widespread breach of human rights in Australia that should be addressed thoroughly in Australia's report to the Committee against Torture. The National Council to Reduce Violence Against Women and Children stated that 'violence against women is a fundamental breach of human rights, and sexual assault and domestic and family violence are the most pervasive forms of violence perpetrated against women in this country'.¹
6. Domestic and family violence is one of the most insidious forms of violence against women.² As set out in the general recommendation on the Convention on the Elimination of All Forms of Discrimination against Women No 19, it is generally accepted that domestic violence often involves extreme physical and psychological suffering amounting to torture as defined under CAT.³ This approach to domestic violence has been accepted by the CAT Committee which has condemned 'the prevalence of violence against women and girls, including domestic violence' in its Concluding Observations on various countries and in its LOIPR for Australia.⁴
7. The Australian Government should give prominence to the issue of domestic violence in its report to the Committee Against Torture. In particular, it should provide details of:
 - the number and nature of reported cases of domestic violence, the convictions and sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence;⁵
 - abuse and violence experienced by women from different population groups, including

¹ Time for Action: The National Council's Plan for Action to Reduce Violence against Women and their Children 2009-2021 – A Snapshot,

<http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/snapshot_summary/Pages/p1.aspx#1>.

² Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 19 (11th session, 1992), para 23.

³ Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 19 (11th session, 1992)

⁴ Committee against Torture, Concluding Observations on Greece, (2004) UN doc. CAT/C/CR/33/2, §4 and 5. See also Committee against Torture, Concluding Observations on Ecuador, (2006) UN doc. CAT/C/ECU/CO/3, §17; Committee against Torture, Concluding Observations on Argentina, (2004) UN doc. CAT/C/CR/33/1, §6; Committee against Torture, Concluding Observations on Bahrain, (2005) UN doc. CAT/C/CR/34/ BHR, §§6-7; Concluding Observations on Nepal, (2005) UN doc. CAT/C/NPL/CO/2, § 27.

⁵ See CEDAW Action Plan for Women in Australia, (2001),

<http://www.womenslegalsw.asn.au/downloads/law-reform/2011CEDAWNGOS_CEDAWActionPlan.pdf>, recommendation 5d.

women with disabilities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women;⁶

- the implementation and funding of the National Action Plan to Reduce Violence Against Women and their Children in its report to the Committee against Torture, particularly with respect to:
 - how the plan takes into account the specific situation of Aboriginal and Torres Strait Islander women, women with disabilities and women from culturally and linguistically diverse backgrounds; and
 - the steps taken to implement an independent supervision mechanism that involves civil society;⁷
- the number of domestic violence deaths, the existence and nature of domestic violence death review systems across Australia and the gaps in death review processes;⁸ and
- the availability of, and turn away rates at, appropriate supported emergency and subsequent accommodation for women escaping domestic violence, and the number of exclusion orders being made as part of a protection order to assist women escaping domestic violence remain in their homes.⁹

8. We refer the Department to our submission to the National Human Rights Action Plan Baseline Study Consultation for further detail on the issue of domestic violence against women (attached).

Aboriginal and Torres Strait Islander Women

Overrepresentation in prisons (LOIPR para 28)

9. The issue of the overrepresentation of Aboriginal and Torres Strait Islander women in prison should be given prominence to in Australia's next report to the Committee against Torture. We note that this issue has been subject to recommendations by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.
10. Aboriginal and Torres Strait Islander women are highly overrepresented in prisons. Aboriginal and Torres Strait Islander women are almost 20 times more likely to be incarcerated than non-Aboriginal and Torres Strait Islander women.¹⁰ Many of these

⁶ See Committee on the Elimination of All Forms of Discrimination against Women, Concluding Observations on Australia, (2010) paras 40-45.

⁷ As recommended in Australia's 2011 UPR para 86.80 (accepted by Australia) and the Committee on the Elimination of Discrimination Against Women in its 2010 Concluding Observations on Australia, para 29.

⁸ See the submission made by the Federation of Community Legal Centres Victoria on the draft Human Rights Action Plan Baseline Study, including the recommendation that the Australian Government should provide leadership through the Council of Australian Governments and the Standing Committee of Attorneys-General to establish domestic violence death reviews in all jurisdictions that adhere to best practice principles, such as independence and active participation and central involvement of advocates and experts in violence against women.

⁹ See CEDAW Committee, Concluding Observations on Australia, (2010) paras 29, 41 and 45; UN General Assembly Universal Periodic Review A/HRC/WG.6/10/L. 8, para 86.82.

¹⁰ See generally, Australian Bureau of Statistics, Prisoners in Australia 2006 and Human Rights Law Resource Centre Ltd, *Making Rights Real: A National Human Rights Action Plan for Australia*, p100 and Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission (2007), p 129.

women are survivors of domestic violence and sexual assault (over 80%)¹¹ and require adequate counselling and mental health care (LOIPR paragraph 33).

11. We refer the Department to our submission to the National Human Rights Action Plan Baseline Study Consultation (attached) for further details on this point.

Accessibility of culturally appropriate legal aid and justice services (LOIPR para 37)

12. The accessibility of culturally appropriate legal aid and justice services for Aboriginal and Torres Strait Islander women should be given prominence to in Australia's next report to the Committee against Torture. This topic has also been the subject of recommendations by the CEDAW Committee, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

13. Aboriginal and Torres Strait Islander women remain chronically disadvantaged in terms of their access to justice, especially in regards to situations of family violence and sexual assault. This issue was specifically recognised by the Senate Legal and Constitutional Affairs Committee.¹² The lack of access to justice for Aboriginal and Torres Strait Islander women is also affected by their lack of access to culturally appropriate legal assistance, particularly in rural and remote locations.

14. We refer the Department to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this point.

If you would like to discuss any of the issues raised in our submission in more detail please contact me on 02 8745 6900 or by email at edwina.macdonald@wlsnsw.org.au.

Yours faithfully,



Edwina MacDonald
Law Reform and Policy Coordinator

Mélanie Allard
Volunteer

¹¹ Lawrie, R, Speak out speak strong: researching the needs of Aboriginal women in custody (2003).

¹² Senate Legal and Constitutional Affairs Committee (2004) *Inquiry into Legal Aid and Access to Justice* and Update to the Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (June 2010) p 11. <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AA_TSIW_Australia46.pdf>.