

5 March 2012

The Secretariat  
National Human Rights Action Plan  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

By email: [nhrap@ag.gov.au](mailto:nhrap@ag.gov.au)

Dear Secretariat,

**National Human Rights Action Plan Exposure Draft**

Please find attached Women's Legal Services NSW's comments to the National Human Rights Action Plan Exposure Draft

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 [janet.loughman@wlsnsw.org.au](mailto:janet.loughman@wlsnsw.org.au)

Yours faithfully,

Janet Loughman  
Principal Solicitor

Mélanie Allard  
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# Women’s Legal Services NSW

## Submission to

### Australia’s National Human Rights Action Plan Exposure Draft Consultation

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## INTRODUCTION

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1. Women's Legal Services NSW (WLS NSW) welcomes the opportunity to comment on Australia's National Human Rights Action Plan Exposure Draft (Draft Action Plan). Our submission focuses primarily on human rights issues affecting women and reaffirms our position in our submission in response to Australia's National Human Rights Action Plan Baseline Study (Baseline Study).
2. In structuring this submission we have followed the structure of the National Human Rights Action Plan Exposure Draft. We open with some general comments and go on to address each section as well as specific actions with regards to women within these sections.
3. The submission includes recommendations about additional content that should be included in the Action Plan.

### 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.
5. From 2008-2010, WLS NSW jointly coordinated (with the YWCA Australia) the NGO contribution to Australia's review under the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*. With the YWCA Australia, we co-authored the *CEDAW Action Plan* on behalf of a broad coalition of Australian NGOs.

### General Comments

6. It is disappointing that the Draft Action Plan does not articulate clearly the Australian Governments' broader policy objectives and framework for improving human rights within Australia. The Draft Action Plan lists numerous individual actions – many of which are existing programs or activities, or which only apply to Victoria – without providing long-term goals that the actions are seeking to work towards.
7. WLS NSW maintains that it is essential that the Action Plan is comprehensive and addresses the most urgent issues with respect to equality and anti-discrimination in Australia through a gender based perspective. Furthermore, the Action Plan should reflect the recommendations contained within the *CEDAW Action Plan* (extracted at Attachment A). The *CEDAW Action Plan* was developed by NGOs as a practical guide to responding to and implementing the CEDAW Committee's

2010 Concluding Observations on Australia. It includes targeted, specific and measurable actions, and serves as an example of a strong action plan.

8. We also warmly welcome the Government's commitment to incorporating the Universal Periodic Review (UPR) recommendations accepted in full or in part into the National Human Rights Action Plan.<sup>1</sup> We note, however, that not all accepted UPR recommendations have been included in the Draft Action Plan<sup>2</sup> and strongly recommend that they be included in the final Action Plan.
9. While the Government has implemented some of the recommendations for a human rights action plan made by the Regional Office for the Pacific, Office of the High Commissioner for Human Rights in its submission on the Baseline Study, the Draft Action Plan fails to address several key recommendations. Specifically, WLS NSW submits that the Action Plan should:
  - address how the Action Plan is to be financed;
  - include activities that are specific, realistic and measurable;
  - include greater reference to the recommendations made by the CEDAW Committee in its 2010 review of Australia; and
  - include details of a monitoring and evaluation framework to monitor the plan's progress, and:
    - include gender baselines and indicators;
    - be transparent, accountable and participatory; and
    - include feedback from people affected by the Action Plan.
10. WLS NSW acknowledges that the Australian Government is reliant upon working with State and Territory Governments to implement the Action Plan. WLS NSW notes that while the Victorian Government is mentioned, there are few specific references to other State and Territory Government actions. We have written to the NSW Attorney General calling upon the NSW Government to immediately commit to the Action Plan. We have also commended the NSW Government on some recent initiatives, including a pilot counselling program for women in prison and recommend these initiatives be expanded and included in the final Action Plan.

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<sup>1</sup> Robert McClelland MP, *Address to the NGO Forum on Human Rights*, Canberra, 22 June 2011.

<sup>2</sup> For example, UPR 86.80 with respect to the independent monitoring mechanism for the National Action Plan to Reduce Violence Against Women and Children; there is no reference to UPR 86.120 with respect to efforts to increase the representation of Indigenous women in decision making posts; there is no reference to UPR 86.52 with respect to considering the adoption of temporary special measures as recommended by CEDAW; there is no specific reference to pay inequity or comprehensive child care policy as required by UPR recommendation 86.99; there are no specific measurables relating to prohibiting discrimination 'on all grounds' as outlined in UPR 86.42, 86.44, 86.45, including sexual orientation and gender identity (UPR 86.66-68) and promoting 'substantive equality' (UPR 86.42); there are no specific measurables relating to UPR 86.39 about sterilisation of women and girls with disabilities;

## **PROTECTION AND PROMOTION OF HUMAN RIGHTS IN AUSTRALIA**

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### **Improving data collection and analysis – Action 1**

11. There is a lack of high quality, consistent data with respect to human rights issues. WLS NSW appreciates that Action 1 of the Draft Action Plan endeavours to improve measurement of progress. We submit that the Action Plan should identify specific data that should be collected in order to address this problem and ensure that measurement on Australia's progress can be made in the future. Further mechanisms for collecting and analysing data must be included as a key action in the Action Plan. In order to address the experiences of different groups within Australia, such data must be disaggregated appropriately, including by gender, race, age, disability, geographical location, sexual orientation and gender identity. Gender based indicators and targets should also be included.
12. WLS NSW acknowledges and supports the Government's commitment to Actions 1 and 220 which undertakes to establish advisory groups to provide advice on matters of data and improving measurement of progress on human rights in Australia. However, WLS NSW calls specifically for independent monitoring and reporting of national gender equality benchmarks and indicators, including the Australian Bureau of Statistics Gender Indicators and disaggregated data to reveal the situation of different groups of women, such as women with disabilities, Aboriginal and Torres Strait Islander women, women from rural areas, culturally and linguistically diverse women, and lesbian, bisexual or transgender women.
13. The Draft Action Plan provides no details on the independent agency resourced to report evidence-based assessment of progress against an integrated set of national gender equality indicators and to benchmark progress against those indicators over time. The Draft Action Plan also fails to address how the independent monitoring and evaluating mechanisms will be structured and funded. WLS NSW submits that the Action Plan should include the details of the development and implementation of a funded mechanism for independent monitoring and reporting of national gender equality benchmarks and indicators. See also CEDAW Action Point 1b in Attachment A.

### **Australia's international human rights commitments – Actions 2 to 16**

14. The Australian Government must give full and effective implementation of CEDAW as recommended by the CEDAW Committee. The CEDAW Committee calls for the integration of a gender perspective and explicit reflection of the provisions of the convention in all efforts aimed at the achievement of the Millennium Development Goals.<sup>3</sup>
15. WLS NSW supports the submission of the Regional Office for the Pacific, UN Office of the High Commissioner for Human Rights (*Comments on the Draft Baseline Study for a National Human Rights Action Plan, Australia* (July 2011)), that the Baseline Study makes insufficient reference to existing authoritative

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<sup>3</sup> *Concluding Comments on CEDAW, Australia*, 30 July 2010, paragraph 48, accessed on 1 March 2012 at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf>

reports and their recommendations with regard to the full range of Australia's human rights obligations. WLS NSW submits that the Action Plan must make sufficient reference to international authoritative reports and their recommendations, including those of CEDAW and UPR.

### **Legal protections – Actions 17 to 20**

16. WLS NSW acknowledges the Government's undertaking of Action 18 to consolidate anti-discrimination laws. However, WLS NSW reiterates that the Action Plan should reflect the recommendations from the CEDAW Committee<sup>4</sup> and other United Nations mechanisms, as well as CEDAW Action Plan Point 1a, that the Australian Government's commitment to enhance the anti-discrimination law process should fill *all* gaps in protection and legislation and provide comprehensive protection to the rights of equality and non-discrimination.
17. The Action Plan should include the implementation of these recommendations and address in greater detail the following issues. The consolidation of anti-discrimination legislation will require extensive reform through a transparent and consultative process in order to strengthen and modernise the nation's anti-discrimination regime. Such reform should include addressing all grounds of discrimination, including status of being a victim of domestic violence, low socio-economic status, homelessness, sexual orientation and gender identity and irrelevant criminal record.<sup>5</sup> Furthermore, the anti-discrimination legislation must provide stronger, clearer and more effective equality laws that specifically address the human rights issues faced by Aboriginal and Torres Strait Islander women and other women minority groups, including intersectional discrimination.<sup>6</sup> Women's experience of life differs according to a variety of factors, including gender, race, class, ethnicity, sexual orientation, ability, age, language and religious belief. As such, they may be discriminated on the basis of one or more of these factors. They may also be discriminated on the basis of a combination of these intersecting factors.<sup>7</sup> Discrimination law must reflect this lived experience of women.

### **Australia's human rights framework – Actions 21 to 25**

18. WLS NSW continues to recommend that the Australian Government should adopt a Human Rights Charter or Act to protect the rights of the people within its borders and which it has an international obligation to protect, as well as provide its people with a legal remedy when their rights are breached. This was

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<sup>4</sup> *Concluding Comments on CEDAW, Australia* at para 25.

<sup>5</sup> See for example, NACLC, Response to the *Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (Consolidation of Anti-Discrimination Law submission)*, February 2012 at pages 29-40 accessed on 1 March 2012 at:

<http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Documents/Consolidation%20-%20Discussion%20Paper%20-%20Submissions%20-%20National%20Association%20of%20Community%20Legal%20Service%20-%201%20Feb%202012.PDF>

<sup>6</sup> NACLC, *Consolidation of Anti-Discrimination Law submission* at pages 41-43

<sup>7</sup> See Dasvarma, Amrita & Evelyn Loh, 'Intersectional Discrimination', *Beyond Tolerance: National Conference on Racism*, 12 - 13 March 2002, accessed on 1 March 2012 at:

[http://www.hreoc.gov.au/racial\\_discrimination/conferences/beyond\\_tolerance/speeches/dasvarma.html](http://www.hreoc.gov.au/racial_discrimination/conferences/beyond_tolerance/speeches/dasvarma.html)

recommended by the National Human Rights Consultation and is supported by the recommendations of several United Nations human rights mechanisms, including the CEDAW Committee and UPR recommendations.<sup>8</sup> See also CEDAW Action Plan Point 1c.

19. The recommendations of the National Human Rights Consultation and the United Nations human rights mechanisms should be included in the Action Plan.

## **HUMAN RIGHTS CONCERNS OF THE GENERAL COMMUNITY**

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### **Access to justice – Actions 26 to 36**

Women suffer from unequal access to justice, particularly in relation to domestic and family violence matters. The Action Plan should include further details on how the Government will address barriers and issues with access to justice for women in general, as well as for particular groups of women. We also refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on the issue of access to justice.

## **THE HUMAN RIGHTS EXPERIENCE OF SPECIFIC GROUPS IN AUSTRALIA**

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### **Women**

20. Women account for more than half the population and face issues of systemic gender discrimination and inequality. Further, one in three women experience physical violence at some time in their lives. Consequently, the Action Plan should specifically address in greater detail the human rights issues of women.
21. In general, further detail is needed in the Action Plan on the range of human rights issues faced by women, as identified in Australia's review under CEDAW in the *CEDAW Committee's Concluding Observations*, the *Australian NGO Report*, the *Aboriginal and Torres Strait Islander Women's NGO Report*, and the *CEDAW Action Plan*.
22. The Action Plan must also address in more detail the specific situation, experiences and rights of different groups of women, including Aboriginal and Torres Strait Islander women, women with disabilities, women living in regional, rural and remote areas, women from culturally and linguistically diverse backgrounds, and women identifying as lesbian, bisexual, transgender, transsexual or intersex. Where these are addressed under different sections to women generally, cross-references to these sections should be included under a broader priority area of achieving gender equality.

### **Freedom from violence – Actions 100 to 111**

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<sup>8</sup> See UPR recommendation 86.22 and *Concluding Comments on CEDAW, Australia 2010 at*, paras 24 and 25.

23. WLS NSW has a particular interest in ensuring that human rights are realised for women experiencing family and domestic violence. WLS NSW acknowledges the Government's effort to reduce violence against women and children in its implementation of the National Plan to Reduce Violence against Women and their Children 2010-2022 (National Plan). However, WLS NSW notes there is no specific reference to the independent monitoring mechanism of the National Plan as required by UPR recommendation 86.80. WLS NSW is further concerned that the Action Plan does not sufficiently take into account the specific situation of Aboriginal and Torres Strait Islander women and migrant and refugee women. The CEDAW Committee also made a similar recommendation in its review of Australia (para 29), which has been reinforced in the *CEDAW Action Plan* (point 5b).
24. The Action Plan should implement and reflect the *CEDAW Action Plan* recommendations (see full recommendations at Attachment A). We also refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on the issue of family violence.
25. WLS NSW refers to Action 103 which notes anyone at risk of domestic or family violence or sexual assault 'can access 1800RESPECT'. WLS NSW notes that calls to 1800 (freephone) numbers and 1300/13 numbers (local rate numbers) from mobiles can cost up to \$1.78 a minute.<sup>9</sup> This likely means that 1800RESPECT and indeed many other 1800 and 13/1300 numbers are not accessible for all who need them. WLS NSW raised this issue in its submissions to a recent Australian Communications and Media Authority (ACMA) inquiry on this topic. We also refer to the Australian Communications Consumer Action Network's submission in response to the *Inquiry into Domestic Violence Issues and Trends in NSW* which discusses this issue.<sup>10</sup> We further note that the Attorney General's Department is aware of this issue and we warmly welcome their submission in support of the ACMA's proposal to change the Telecommunications Numbering Plan 1997 such that calls from mobiles to 1800 number be free and calls from mobiles to 13/1300 numbers be charged at a local rate.<sup>11</sup> WLS NSW believes this should be included in the Action Plan.
26. WLS NSW acknowledges Action 106 in which the Government undertakes to respond to the Australian Law Reform Commission (ALRC) and to NSW Law Reform Commission (NSWLRC) 2010 Report *Family Violence—A National Legal Response*. However, WLS NSW submits that the Action Plan should include a timeframe for response and implementation of recommendations. It should also include responding to and implementing the Australian Law Reform Commission's 2012 Report *Family Violence and Commonwealth Laws*.

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<sup>9</sup> ACMA, *Numbering: Structure of Australia's telephone numbering plan, Consultation paper number one*, 2010, page 45.

<sup>10</sup> ACCAN, Response to *Inquiry into Domestic Violence Issues and Trends in NSW*, September 2011 accessed on 2 March 2012 at:

[http://accan.org.au/index.php?option=com\\_content&view=article&id=369:submissions-template&catid=141:phones&Itemid=174](http://accan.org.au/index.php?option=com_content&view=article&id=369:submissions-template&catid=141:phones&Itemid=174)

<sup>11</sup> Attorney General's Department, *Submission on Numbering: Calls to freephone and local rate numbers. The way forward*, 1 December 2011, accessed on 2 March 2012 at: [http://www.acma.gov.au/webwr/\\_assets/main/lib410119/ifc37-2011\\_attorney-generals\\_dept.pdf](http://www.acma.gov.au/webwr/_assets/main/lib410119/ifc37-2011_attorney-generals_dept.pdf)



27. The Action Plan should include further actions to ensure that the family law system functions to protect women and children from violence. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this issue.

### **Gender equality – Actions 112 to 116**

28. The following should also be reflected in the Action Plan regarding gender equality:

- The Action Plan fails to mention that there are also intra-gender pay equity issues, including for Aboriginal and Torres Strait Islander women, CALD women, and lesbian women.<sup>12</sup>
- Despite equal remuneration provisions in *Fair Work Act*, there is still discrepancy in pay between women and men. The 2009 report of the Parliamentary Committee Inquiry into pay equity, *Making it Fair*,<sup>13</sup> made numerous recommendations to improve pay equity and issues associated with increasing female participation in the workforce. WLS NSW also refers to the recent decision *Equal Remuneration Case 2012 FWAFB 1000 - 1 February 2012*. We note this decision occurred after the release of the Draft Action Plan for public comment. While this decision found in favour of equal remuneration in the social, community and disability services industry it will be many years before its full impact is realised. WLS NSW recommends that specific time bound measures for its fully funded implementation be included in the Action Plan.
- The Government's paid parental leave does not account for superannuation funds. This issue will contribute to women's poverty in retirement years because of insufficient superannuation funds. Paid parental leave should include superannuation.

29. The Action Plan should also implement and reflect the following *CEDAW Action Plan* recommendations (see full recommendations at Attachment A):

- Point 3 regarding data collection of women's participation on public and private boards, increased allocation of funding for training women in relation to board representation, and targets of 30% for female private board participation (as well as additional targets for other groups of women). WLS NSW acknowledges the Government's commitment at Action 113 to achieve at least 40% representation of women in public sector boards. WLS NSW submits that the Government must also focus on the private sector boards.
- Point 4 regarding temporary special measures for Aboriginal and Torres Strait Islander women in public and political life.

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<sup>12</sup> *Update to the Australian NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women*, June 2010 at p. 7 accessed on 1 March 2012 at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian\\_NGO\\_Australia46.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_NGO_Australia46.pdf)

<sup>13</sup> The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (November 2009).

- Point 7 regarding the need to remove Australia’s reservation to CEDAW Article 11(2) and to extend the paid parental leave program to include superannuation, leave for fathers, an extended period of leave and an increased payment.
- Point 8 regarding the need for a targeted campaign to improve rates of reporting sexual harassment in the workplace. WLS NSW acknowledges the Government’s commitment at Action 107 to develop resources to assist bystanders to address sexual harassment in the workplace and recommends specific targeted campaigns in this regard.
- Point 9 regarding the need for a comprehensive childcare policy.
- Point 14 regarding the need for temporary special measures to enable women with disabilities to take on leadership positions.

30. The CEDAW Action Plan recommendations are supported and complemented by the following UPR and CEDAW review recommendations, which should also be reflected in the Baseline Study and Action Plan:

- Adopt temporary special measures to ensure the representation of women in political and public life reflects the full diversity of the population, including Aboriginal and Torres Strait Islander women and CALD women (CEDAW para 27, UPR 86.52).
- Adopt targets of 40 per cent representation of women on public and private sector boards (UPR 86.55).
- Adopt urgent measures to ensure that women with disabilities are better represented in leadership and decision making positions (CEDAW paras 42 and 43).
- Develop a National Pay Strategy and specialised unit to monitor pay gaps mechanisms (UPR 86.99, CEDAW para 39).
- Assess comprehensively the effectiveness of the *Fair Work Act* in eliminating the gender pay gap (CEDAW para 39).
- Review the paid parental leave scheme, giving consideration to increasing the payment and introducing superannuation (CEDAW para 39).
- Develop a comprehensive childcare policy (UPR 86.99, CEDAW para 39).
- Address barriers to workforce participation for CALD women (CEDAW para 45).
- Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from Aboriginal and Torres Strait Islander communities (UPR 86.53).

### **Freedom from Discrimination – Actions 117 to 118**

31. WLS NSW supports the concept of a mechanism to collect and publish data in relation to various aspects of life as described at section 4.5(c) of the Human

Rights Law Centre's submission regarding the consolidation of federal anti-discrimination laws in order to effectively measure areas of inequality.<sup>14</sup>

32. This section of the Action Plan should also reflect the issues that we have raised above in our comments in 'Protection and promotion of human rights in Australia'.

### **Additional human rights issues for women**

33. It is imperative that the Action Plan takes a gendered perspective throughout. That is, the Action Plan must acknowledge the different life experiences of different groups of women, including the additional disadvantage some groups of women face because of compound and intersectional discrimination. The Action Plan must include a better representation of the different experiences of different groups of women, including those outlined below.

### **Aboriginal and Torres Strait Islander women**

34. Aboriginal and Torres Strait Islander people are among the most disadvantaged people in Australia. However, Aboriginal and Torres Strait Islander women are even more disadvantaged due to the intersection of racial and gender discrimination and distinctly lower socio-economic status.<sup>15</sup> Notwithstanding, inadequate data remains an issue to assess the real situation of Aboriginal and Torres Strait Islander women and to develop targeted policies and programs that will improve their lives.<sup>16</sup>
35. The Action Plan must address the human rights issues faced by Aboriginal and Torres Strait Islander women. These issues include, but are not limited to, the right to self-determination and consultation, freedom from violence and access to justice and legal services. Some detail on each of these issues is set out below, followed by a list of recommendations that the Action Plan should address. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this issue.
36. WLS NSW acknowledges the Government's commitment at Action 66 to continue to support specific initiatives to empower Aboriginal and Torres Strait Islander women. WLS reiterates the importance that Aboriginal and Torres Strait Islander peoples must always be consulted about programs and policy matters that directly affect them. Failing to do so is a breach of the Aboriginal and Torres Strait Islander peoples' right to self-determination and consultation. More

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<sup>14</sup> Human Rights Law Centre, *Advance Australia Fair: Addressing Systematic Discrimination and Promoting Equality* (May 2011), pp 32-34; also see University of Cambridge, Cambridge Pro Bono Project, *Equality for All: Submission on Australia's proposed reform of anti-discrimination legislation*, (18 March 2011) pp 46-48.

<sup>15</sup> Amrita Dasvarma & Evelyn Loh, 'Intersectional Discrimination', *Beyond Tolerance: National Conference on Racism*, March 2002, accessed on 1 March 2012 at: [http://www.hreoc.gov.au/racial\\_discrimination/conferences/beyond\\_tolerance/speeches/dasvarma.html](http://www.hreoc.gov.au/racial_discrimination/conferences/beyond_tolerance/speeches/dasvarma.html)

<sup>16</sup> 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, August 2009, accessed on 1 March 2012 at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian\\_ATSI\\_Women.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_ATSI_Women.pdf)

importantly, the Government must ensure that the views of Aboriginal and Torres Strait Islander women are heard. This requires that Aboriginal and Torres Strait Islander women are represented in the public and political sphere and have the opportunity to be consulted on the development of programs and political and policy issues.

37. Aboriginal and Torres Strait Islander women experience family violence at a significantly higher rate than non-Indigenous women.<sup>17</sup> WLS NSW acknowledges the Government's commitment at Action 90 to implement initiatives which aim to reduce Indigenous family violence. However, WLS NSW is concerned that the Action Plan does not sufficiently take into account the specific situation of Aboriginal and Torres Strait Islander women.
38. Aboriginal and Torres Strait Islander women and children remain chronically disadvantaged in terms of their access to justice, especially in relation to family violence. WLS NSW acknowledges the Government's commitment at Action 87 to provide funding for legal services. However, the Action Plan should implement and reflect the following CEDAW Action Plan recommendations (see full recommendations at Attachment A):
- Point 3 regarding training and targets to increase the representation of Aboriginal and Torres Strait Islander women on public and private boards.
  - Point 4 regarding the need for a temporary special measure to increase the role of Aboriginal and Torres Strait Islander women in public and political life.
  - Point 5a regarding adequate funding of the National Plan to Reduce Violence against Women and Children, especially for family violence specialist services that are culturally appropriate for Aboriginal and Torres Strait Islander women.
  - Point 6b regarding the need to provide sufficient funding for culturally appropriate services to alleviate homelessness for Aboriginal and Torres Strait Islander women, particularly those in rural and remote areas.
  - Point 11 regarding the need for culturally appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas.
39. The *CEDAW Action Plan* recommendations are supported and complemented by the following UPR and CEDAW review recommendations, which should also be reflected in the Action Plan:
- Adopt temporary special measures to ensure equal participation and representation of women in public and political life, with a particular focus on Aboriginal and Torres Strait Islander women, and to improve Aboriginal and Torres Strait Islander women's enjoyment of human rights in all sectors (CEDAW paras 27, 35 and 41; see also UPR 86.109, 86.110 and 86.120).
  - Implement specific strategies within the National Plan to Reduce Violence against Women and Children to address violence against Aboriginal and

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<sup>17</sup> Australian Government (FaHCSIA), 'Personal Safety', *Facts about Women's Safety* at 2 accessed on 1 March 2012 at: [http://www.fahcsia.gov.au/sa/women/pubs/general/factsheet\\_women\\_issues/Documents/fs2\\_facts\\_about\\_womens\\_safety.pdf](http://www.fahcsia.gov.au/sa/women/pubs/general/factsheet_women_issues/Documents/fs2_facts_about_womens_safety.pdf)

Torres Strait Islander women, including funding culturally-appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas (CEDAW para 41; also UPR 86.92).

- Ensure Aboriginal and Torres Strait Islander women have access to accommodation, health, employment and education support services (UPR 86.101 and 86.119).
- Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from Aboriginal and Torres Strait Islander communities (UPR 86.53).

### **Girls and young women**

40. The section in the Draft Action Plan on children and young people fails to present a gendered perspective. It does not address the particular human rights issues that concern girls and young women in Australia, namely:

- human rights, equality and discrimination education to help change Australia's culture among the next generation;
- promoting and empowering girls and young women to continue tertiary education in less traditional gender programs and seek leadership roles in the workforce to eliminate stereotypes and increase the representation of women in the public and political sphere;
- body image and media portrayal of gender (as addressed in the Australian NGO Report on the Implementation of the CEDAW (June 2009) at pages 19-20).

41. The Action Plan should implement and reflect the following *CEDAW Action Plan* recommendation (see full recommendation at Attachment A):

- Point 10 regarding the need to significantly improve the employment-related outcomes of the education system for Australian women, including through collection, analysis and public reporting of disaggregated data, and the update and implementation of a national vocational education and training policy for women.

42. The *CEDAW Action Plan* recommendation is supported and complemented by the following UPR and CEDAW review recommendations, which should also be reflected in the Action Plan:

- Allocate resources to encourage women to pursue programs of study and professional development in areas that are traditionally dominated by men (CEDAW para 37).
- Allocate resources to encourage women to pursue programs of study and professional development in areas which are traditionally dominated by men (CEDAW para 37).
- Take concrete measures to eliminate occupational segregation, including by removing barriers to women in all sectors and to ensure equal opportunities for, and equal treatment of, women and men in the labour market (CEDAW para 39).

- Further strengthen efforts to promote equality, non-discrimination and tolerance through the monitoring of racially motivated violence and inclusion of human rights education in school and university curriculum (UPR 86.57).
- Step up measures, such as human rights education in schools, so as to promote a more tolerant and inclusive society (UPR 86.58).

### **Lesbian, bisexual, transgender, transsexual or intersex identified women**

43. WLS NSW supports the comments made in response to the Draft Human Rights Baseline Study and the Draft National Human Rights Action Plan by Hawkesbury Nepean Community Legal Centre on the actions that should be included to address discrimination in this area. We refer the Government to their submissions and reaffirm the importance of including these actions in the final Action Plan.

### **Homeless women**

44. WLS NSW commended the Australian Government for its formal recognition of the links between homelessness and domestic violence in the Human Rights Baseline Study Consultation. However, the Action Plan fails to address the difficulties that women experience in trying to obtain appropriate supported and subsequent accommodation.

45. WLS NSW supports the implementation of measures to assist women escaping domestic violence to stay in their homes with the perpetrator leaving.<sup>18</sup> The Action Plan should also include mechanisms to collate data regarding the issue of exclusion orders as a part of apprehended violence orders to fully assess how many applications for exclusion orders are lodged and how many exclusion orders are granted as interim and final orders.

46. The Action Plan must address the particular issues faced by older women with respect to accessing affordable housing. In particular, the difficulties older women face in obtaining affordable housing after leaving a marriage or relationship later in life because they often have little or no asset base or superannuation. These women are even more vulnerable to this issue because of mobility and health issues.<sup>19</sup>

47. The Action Plan should implement and reflect the following *CEDAW Action Plan* recommendation (see full recommendation at Attachment A):

- Point 6 regarding the need to provide sufficient funding to alleviate violence-related homelessness, which would be reflected by a 20 per cent reduction in the turn-away rate of family violence shelters by 2012 and the implementation of specific and culturally appropriate measures to alleviate homelessness for Aboriginal and Torres Strait Islander women.

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<sup>18</sup> See Women's Legal Services NSW, *Universal Periodic Review of Australia: Issues for inclusion in Australian Government's Report Submission, April 2010 at page 2* accessed on 1 March 2012 at: [http://www.womenslegalnsw.asn.au/downloads/law-reform/2010WLSNSW\\_AGD\\_UPR.pdf](http://www.womenslegalnsw.asn.au/downloads/law-reform/2010WLSNSW_AGD_UPR.pdf)

<sup>19</sup> NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Australia, June 2009, p. 86.

48. The *CEDAW Action Plan* recommendation is supported and complemented by the following UPR and CEDAW review recommendations, which should also be reflected in the Action Plan:

- Develop effective strategies to prevent homelessness resulting from domestic violence and ensure that women who have experienced domestic and family violence and their children are provided with appropriate ongoing accommodation and integrated support (CEDAW para 29; see also UPR 86.101).

### **Women with disabilities**

49. WLS NSW commends the Government's commitments at Actions 154 to 173 to uphold and safeguard the rights of people with disability.

50. WLS NSW acknowledges the Government's commitment at Action 170 to work with States and Territories to improve laws regarding the sterilisation of women and girls with disabilities. However, WLS NSW continues to advocate that the Action Plan should implement both the UPR and CEDAW review recommendations that non-therapeutic sterilisation of women and girls without their consent be prohibited (UPR 86.39 and CEDAW para 43). WLS NSW refers the Government to the Women with Disabilities Australia's Submission to the United Nations Special Rapporteur regarding forced sterilisation in Australia for further details on this issue.<sup>20</sup>

51. WLS NSW acknowledges the Government's support at Action 155 with respect to assisting people with disabilities to become leaders in the community. WLS NSW submits that the Action Plan should also specifically address the representation of women with disabilities in both the public and private sectors.

52. The Action Plan should implement and reflect the following CEDAW Action Plan recommendations (see full recommendations at Attachment A):

- Point 12 regarding the funding of a comprehensive assessment of the situation of women with disabilities in Australia in order to establish a baseline of disaggregated data against which future progress can be measured.
- Point 13 regarding the prohibition of non-therapeutic sterilisation of women and girls without consent.
- Point 14 regarding the need to instigate temporary special measures to enable women with disabilities to take on leadership positions.
- Point 3 regarding education and targets for the representation of women with disabilities on public and private boards.
- Point 5a regarding the funding of appropriate domestic and family violence specialist services for women with disabilities.

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<sup>20</sup> Women with Disabilities Australia, Submission to the United Nations Special Rapporteurs regarding forced sterilisation in Australia, 22 June 2011 accessed on 1 March 2012 at: [http://www.wwda.org.au/WWDA\\_Submission\\_SR2011.pdf](http://www.wwda.org.au/WWDA_Submission_SR2011.pdf)

53. The *CEDAW Action Plan* recommendations are supported and complemented by the following UPR and CEDAW review recommendations, which should also be reflected in the Action Plan:

- Undertake a comprehensive assessment of the situation of women with disabilities in Australia and address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation (CEDAW para 43).
- Adopt urgent measures to ensure that women with disabilities are better represented in decision-making and leadership positions, including through the adoption of temporary special measures such as quotas and targets (CEDAW paras 35 and 43).
- Enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent (UPR 86.39 and CEDAW para 43).

### **Women carers**

54. The Action Plan should reflect that women predominantly take on the responsibilities of carers.<sup>21</sup> This can have a number of consequences, including contributing to women's low participation in the workforce, persistence in the unequal pay gap between women and men and limited superannuation funds in later years.

### **Women in prison**

55. WLS NSW acknowledges the Government's commitment at Action 186 to fund the Castan Centre to undertake research into rates of imprisonments. However, WLS NSW submits that the Action Plan should also include comprehensive gender specific data with respect to people in prison. We welcome Corrective Services NSW recent publication of a number of leaflets, including: *Female Offenders: A Statistical Profile*; and *Children of Parents in Custody: Facts and Figures* and encourage this to continue and be included in the Action Plan. Furthermore, the Action Plan should address intersectional discrimination with respect to specific groups of women in prisons, notably, Aboriginal and Torres Strait Islander women, CALD women, mothers and their children, young women prisoners, women prisoners with disabilities and transgender prisoners.<sup>22</sup> The Action Plan should also implement specific activities to address the factors leading to the overrepresentation of Aboriginal and Torres Strait Islander women in prison.

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<sup>21</sup> Australian Bureau of Statistics. *Disability, Aging and Carers Australia: Summary of Findings*, 2003 (15 September 2004) Cat. No. 4430.0, accessed on 1 March 2012 at: [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/\\$File/44300\\_2003.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/$File/44300_2003.pdf)

<sup>22</sup> See Sisters Inside Inc., *Women Prisoner's Human Rights* (June 2009), page 29, accessed on 1 March 2012 at: <http://www.sistersinside.com.au/media/FINAL%20-%20National%20HR%20Submission%20June%202009.pdf>



56. WLS NSW acknowledges the Government's support at Action 179 for a working group which aims to address the needs of people with mental illness and/or cognitive disability. WLS NSW submits that more needs to be done for women in prison. Specifically, the Action Plan should address the lack of access to counselling services and appropriate mental health care for women in prison to deal with issues of domestic violence and sexual assault as required by acceptance of UPR recommendation 86.82. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this issue.
57. We warmly welcome the pilot counselling trial for victims of crime in selected NSW Correctional Centres.<sup>23</sup> This has commenced in NSW for women at Dillwynia Correctional Centre and is expected to shortly commence in Wellington Correctional Centre. We have heard anecdotally that the counselling has been very beneficial to the women in the pilot program at Dillwynia Correctional Centre and we look forward to hearing feedback about the pilot at Wellington Correctional Centre. We strongly support and recommend that counselling for victims of crime be extended to all women in prisons and detention centres. We further recommend that these actions by the NSW Government be included in the Action Plan. We have written to the NSW Attorney General to strongly encourage they provide more specific measurable indicators in this and other areas.
58. The Action Plan should also address the lack of access to specific and targeted legal services to women in prison; that is, legal services that are provided by women for women, and that are culturally appropriate for Aboriginal and Torres Strait Islander women or women from culturally and linguistically diverse backgrounds. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this issue.
59. Furthermore, the Action Plan should address the issue of access to training and education for women which, based on our experiences in working in prisons, is limited.
60. The Action Plan should implement and reflect the following UPR recommendations:
- Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islanders communities in the prison population (UPR 86.93).
  - Strengthen the federal legislation to combat discrimination and ensure an effective implementation with a view to a better protection of the rights of vulnerable persons, in particular children, persons in detention and persons with disabilities (UPR 86.46).
  - Take efficient measures to improve the harsh conditions of custody centres in particular for minorities, migrants and asylum seekers (UPR 86.130).
  - Examine possibilities to increase the use of non-custodial measures (UPR 86.94).

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<sup>23</sup> NSW Government, *Counselling Trial for Victims of Crime in Selected Correctional Centres*, Victims Services Attorney General and Justice, February 2012.

- Enact legislation to ensure the humane treatment of prisoners (UPR 86.71).
- Ensure that all victims of violence have access to counselling and assistance with recovery (UPR 86.82).

### **Women refugees, asylum seekers, migrants and women from culturally and linguistically diverse backgrounds**

61. The Action Plan should more specifically address the human rights issues of women refugees, asylum seekers and migrants as well as culturally and linguistically diverse (CALD) women. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on this issue.
62. The Action Plan should implement and reflect the following *CEDAW Action Plan* recommendations (see full recommendations at Attachment A):
- Point 3 regarding education and targets for the representation of CALD women on public and private boards.
  - Point 10 regarding the need to improve the employment-related outcomes of the education system for CALD women.
  - Point 15 regarding the need to improve the workplace participation rates of CALD women through specific funding for CALD appropriate employment service providers, increased availability and affordability of bridging courses and ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
63. The *CEDAW Action Plan* recommendations are supported and complemented by the following CEDAW review recommendations, which should also be reflected in the Action Plan:
- Take steps to ensure CALD women can participate and be represented equally in all areas of public and political life as well as their equal access to education, employment and health (CEDAW para 27).
  - Take targeted measures to address existing barriers to workplace participation of migrant women, develop policies of equal access to effective job training and placement services that are not limited to traditional employment areas (CEDAW para 45).
  - Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CEDAW para 49).
  - Develop a broad framework for health services for migrant women that will take into account their specific health profiles (CEDAW para 45).

### **Rural women**

64. The Action Plan does not refer to the human rights experiences of rural women, either as part of the section on women or elsewhere.
65. The human rights of women in rural and regional Australia should also be included in the Action Plan because this group is subject to multiple forms of

disadvantage because of their gender and geographical location. For example, these women often lack adequate legal, health, accommodation and education services due to their geographical location. Further, Article 14 of *CEDAW* obliges the Australian Government to take into account the particular problems faced by rural women and to take all appropriate measures to eliminate discrimination against women in rural areas and ensure their right to public participation, access to adequate health care facilities, education and adequate living conditions. We refer the Government to our submission to the National Human Rights Action Plan Baseline Study Consultation for further details on the issue of rural women.

66. The Action Plan should implement and reflect the following UPR and CEDAW recommendations:

- Step up efforts to ensure that people living in the remote and rural areas, in particular Aboriginal and Torres Strait Islander peoples, receive adequate support services relating to accommodation and all aspects of health and education (UPR 86.101, 86.119).
- Implement specific strategies within the national plan to address violence against Aboriginal and Torres Straits Islander women, including funding culturally appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas of Australia (CEDAW para 41).

Women's Legal Services NSW

Janet Loughman

Principal Solicitor

5 March 2012

## **ATTACHMENT A: CEDAW ACTION PLAN**

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### **A 15 Point Action Plan for Implementing the 2010 CEDAW Concluding Observations<sup>24</sup>**

The following points are proposed as an Action Plan to focus on in implementing the CEDAW Committee's Concluding Observations of the July 2010 Australian Government review.

We call on the Australian Government to:

1. Formally respond to this Action Plan and make a commitment to accept each of its points.
2. Respond in detail to each point in this Action Plan, including indicating a timeline for implementation and the Government department, statutory body or officer responsible for the implementation.
3. Provide an interim progress report on each of these Action Points as part of its two-year CEDAW reporting period in 2012.
4. Provide detailed written reasons for the rejection of any point in this Action Plan.

#### **ANTI-DISCRIMINATION AND HUMAN RIGHTS PROTECTIONS**

Action Plan Point 1: In order to ensure a stronger human rights framework for Australian women, the Federal and State/Territory Governments must ensure that, by the 2014 CEDAW reporting period

- a. the consolidation and harmonisation of anti-discrimination laws retains all of the current anti-discrimination protections contained in the Sex Discrimination Act, and the recommendations of the 2008 Senate Committee report are implemented.
- b. the National Action Plan on Human Rights comprehensively addresses all the gender and intra-gender analysis gaps in human rights protection in Australia, and includes implementation of structures for proper recording and measuring of the enjoyment of human rights.
- c. a national Human Rights Act is enacted which protects the full range of civil, political, economic, social and cultural rights.

Action Plan Point 2: The amendment bill to the Sex Discrimination Act should be passed by Federal Parliament by mid-2011, and should reflect the recommendations of the 2008 Senate Committee report.

#### **PARTICIPATION IN PUBLIC AND POLITICAL LIFE**

Action Plan Point 3: To contribute to the equal participation of specific groups of women on public and private boards, the following initiatives should occur:

- a. Data on women's participation on public and private boards must be disaggregated by gender, ethnicity, disability, age, socio-economic status and geographical location and be made publicly available.
- b. The Federal Government must allocate funding to the Australian Institute for

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<sup>24</sup> Extracted from pages 6-9 of the *Australian NGO CEDAW Action Plan for Women in Australia 2011*, which was co-authored by Women's Legal Services NSW with the YWCA Australia on behalf of a broader NGO coalition.

Company Directors to meet at least 25 per cent of demand for training (as established in the 2010 application process), and establish within this process targets for scholarships to support training for Aboriginal and Torres Strait Islander women, women with disabilities, and CALD women to improve their representation on public and private boards.\*

- c. As part of the broader discussion around a 30 percent target for female board participation, additional targets must be set within two years to ensure the participation of Aboriginal and Torres Strait Islander women, women with disabilities and CALD women.

Action Plan Point 4: A special temporary measure must be introduced that specifically aims to increase the role of Aboriginal and Torres Strait Islander women in public and political life. This should take the form of an annual grant round made available to NGO- and community-led programs, and funded to the amount of 25 per cent of the current funding allocated to Government-led leadership programs for Aboriginal and Torres Strait Islander women. After five years, the grant program should be reviewed.

Action Plan Point 5: In preparation for the 2012 CEDAW reporting period, Australian Governments must

- a. implement and adequately fund the National Plan to Reduce Violence against Women and Children, including domestic and family violence specialist services that are culturally appropriate for Aboriginal and Torres Strait Islander women, CALD women, rural and remote women, LGBTIQ women, women with disabilities and older women.
- b. establish and fund an independent body to monitor and evaluate the National Plan's implementation, which includes involvement from the Australian Women Against Violence Alliance.
- c. amend the family law system and legislation to better protect the safety of women and children.\*\*
- d. make publicly available the information on the number and nature of reported cases of domestic violence, on the conviction and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence. This data must be disaggregated by gender, ethnicity, disability, age, socio-economic status and geographical location.
- e. review State procedures for crimes compensation that are available to survivors of human trafficking and establish a harmonised system to enable trafficked persons to access these rights by November 2011.

Action Plan Point 6: The Federal Government must provide sufficient funding to alleviate violence-related homelessness. This commitment should be reflected in

- a. a 20 per cent reduction in the turn-away rate of family violence shelters by the 2012 reporting period; and
- b. inclusion in the implementation of the National Plan of specific and culturally appropriate measures to alleviate homelessness for Aboriginal and Torres Strait Islander women, particularly those in rural and remote areas.

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\* In 2010, the AICD received 2,000 applications for 70 scholarship places.

\*\* As reflected in the Women's Legal Services Australia and Australian Women Against Violence Alliance joint submission to the Commonwealth Attorney-General's Family Violence Bill public consultation, 14 January 2011: see <http://awava.org.au>

## EMPLOYMENT

Action Plan Point 7: In relation to paid parental leave, the Federal Government must

- a. remove Australia's reservation to paid maternity leave under article 11(2) of CEDAW by the July 2012 reporting deadline to the CEDAW Committee.
- b. ensure that the outcomes of the two-year review of the Paid Parental Leave Act include the introduction of superannuation, leave for fathers, an extended period of paid leave and an increased level of payment.

Action Plan Point 8: Implement a targeted campaign to significantly improve the rates of reporting of sexual harassment in the workplace within two years.

Action Plan Point 9: The Federal Government must develop 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, by the 2014 CEDAW reporting period.

## EDUCATION

Action Plan Point 10: To significantly improve the employment-related outcomes of the education system for Australian women

- a. the intersectionality of educational outcomes for specific groups of women (including Aboriginal and Torres Strait Islander women, CALD women, rural and remote women, LGBTIQ women, women with disabilities, older women and single mothers) must be reflected in the collection, quality assurance, analysis and public reporting of disaggregated data, in addition to the categories being implemented in line with the Martin indicators, and this data made publicly available and accessible as a matter of course within two years and thereafter.
- b. COAG must update and implement a national vocational education and training policy for women, including strategies for increasing the affordability and access of vulnerable groups of women to VET, by the 2014 CEDAW reporting period.

## ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN

Action Plan Point 11: By the 2012 CEDAW reporting period, the Federal Government must:

- a. commit to and provide for a budgetary allocation for culturally appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas of Australia to assist victims of sexual assault and family violence, in addition to current funding for Aboriginal Legal Services and Family Violence Units.
- b. continue to support the establishment of peak advisory bodies, including the National Congress and NATSIWA, and strengthen their role in policy development, advocacy and accountability especially through gender balanced representation on these bodies.

## WOMEN WITH DISABILITIES

Action Plan Point 12: The Federal Government must commission and fund a comprehensive assessment of the situation of women with disabilities in Australia within two years, in order to establish a baseline of disaggregated data against which future progress towards CEDAW rights can be measured.

Action Plan Point 13: The Federal Government must enact universal, national legislation

which prohibits non-therapeutic sterilisation of any child unless there is a serious threat to health or life, and prohibits non-therapeutic sterilisation of any woman in the absence of fully informed and free consent, by the 2014 CEDAW reporting period.

Action Plan Point 14: The Federal Government must instigate a temporary special measure to enable women with disabilities to take on leadership positions, in the form of a program that is separate to training for board and sector-specific advisory group representation, with targets for participation in mainstream advisory groups by 2014.

#### CULTURALLY AND LINGUISTICALLY DIVERSE WOMEN

Action Plan Point 15: In order to improve workplace participation rates of CALD women, the Federal Government should, by the 2014 CEDAW reporting period

- a. allocate specific funding to Centrelink to contract CALD-appropriate employment service providers as part of the Job Services Australia network, in order to significantly increase the rate of access of CALD women to employment opportunities.
- b. through the services provided by Australian Education International's National Office of Overseas Skills Recognition (DEEWR), increase the availability and affordability of bridging courses to increase the rate of migrant women attaining requalification in Australia.
- c. ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The Concluding Observations made further recommendations to the Australian Government covering a broader range of issues than those included above. Also, this Action Plan relates specifically to the CEDAW Committee's Concluding Observations of July 2010, and does not attempt to cover the full range of women's advocacy issues in Australia.