



WOMEN'S LEGAL SERVICES NSW

**Incorporating
Domestic Violence Legal Service
Indigenous Women's Legal Program**

7 September 2011

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

By email: nhrap@ag.gov.au

Dear Secretariat,

National Human Rights Action Plan Baseline Study Consultation

Please find attached Women's Legal Services NSW's comments to the National Human Rights Action Plan Baseline Study Consultation.

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,

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Women’s Legal Services NSW

Submission to the

National Human Rights Action Plan Baseline Study Consultation

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INTRODUCTION

1. Women's Legal Services NSW (WLS NSW) welcomes the opportunity to comment on Australia's National Human Rights Action Plan Baseline Study. Our submission focuses primarily on human rights issues affecting women.
2. In structuring this submission we have loosely followed the structure provided in the Attorney-General's Department Questionnaire on the draft Baseline Study. We open with some general comments and go on to address the Questionnaire questions for chapters 1 and 2. Our comments on chapter 3 are structured by groups of women, with responses to the Questionnaire questions provided in relation to each group of women.
3. The submission includes additional content for inclusion in the Baseline Study, as well as recommendations for issues to be included in the Action Plan. We understand that there will be a further consultation process on the content of the Action Plan, and look forward to being involved in that stage of the process.

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. WLS NSW maintains that the Australian Government should adopt a Human Rights Act as recommended by the National Human Rights Consultation, the United Nations Human Rights Council through the Universal Periodic Review (UPR) process, and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) in its review of Australia. A Human Rights Act should include, at the very least, the rights that Australia has an international obligation to protect as well as provide for legal remedies when rights are breached.
7. However, the commitment by the Australian Government to implement a National Human Rights Action Plan thus far, including the Baseline Study, is a step in the right direction. It is essential that the Action Plan and Baseline Study are comprehensive and examine the most urgent issues with respect to equality and anti-discrimination in Australia through a gender based perspective. Furthermore, the National Human Rights Action Plan and Baseline Study 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 is targeted, specific and measurable, and serves as an example of a strong action plan.

8. In general, the Baseline Study would benefit from more specific and detailed information about the status of human rights in Australia, both positive and negative, and less emphasis on current Australian Government initiatives. We support the comments made in this regard by the Regional Office for the Pacific, Office of the High Commissioner for Human Rights in its submission on the Baseline Study; specifically that the Baseline Study and Action Plan should:
 - address how the Plan is to be financed and who will be responsible for implementing different activities;
 - include activities that are specific, realistic and measurable and should include targets and timelines for achievement;
 - include a monitoring and evaluation framework to monitor the plan's progress, and that this framework should:
 - include baselines and indicators;
 - be transparent, accountable and participatory; and
 - include feedback from people affected by the Plan;
 - include greater reference to evidence and recommendations in existing reports and studies on human rights in Australia; and
 - include greater reference to the recommendations of United Nations human rights mechanisms – especially those made by the CEDAW Committee in its 2010 review of Australia.
9. Additionally, as noted in the Baseline Study, there is a lack of high quality, consistent data with respect to human rights issues. The Baseline Study 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 future. Further, mechanisms for collecting and analysing data must be included as a key action in the National Human Rights Action Plan. In order to address the experiences of different groups of Australians, 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.

CH 1: PROTECTION AND PROMOTION OF HUMAN RIGHTS IN AUSTRALIA

What other information (if any) would you include in summarising the key institutional and legal protections and arrangements for promoting human rights in Australia?

10. The Baseline Study should include additional information about the following key institutional and legal protections and arrangements for promoting human rights in Australia.

Inadequate protection of human rights in Australia

11. The Baseline Study should include reference to the findings of the National Human Rights Consultation that Australia's legal and institutional protection of human rights is inadequate, particularly for marginalised and disadvantaged individuals and communities. We refer the Attorney-General's Department to the comments made in Hawkesbury Nepean Community Legal Centre's submission for further detail on the issues and weaknesses in current protections that should be included.

International Human Rights Obligations

12. The Australian Government must give full and effective implementation of CEDAW as recommended by the CEDAW Committee. The 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.¹

13. 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 reports and their recommendations with regard to the full range of Australia's human rights obligations.

Reservations

14. The Australian Government should follow through with its commitment to review its reservations to international treaties, particularly CEDAW regarding maternity leave and women in combat duties since Australia has now legislated in this regard.² Furthermore, the Australian Government should remove its reservation to article 4(a) of the Convention on the Elimination of all Forms of Racial Discrimination (CERD) regarding criminalising the dissemination of ideas based on racial hatred.³

Australian Human Rights Commission

15. The Baseline Study should reflect the limited role of the Australian Human Rights Commission (AHRC) in that it only deals with inquiries and complaints. The Commission does not have authority to make enforceable determinations or require the Australian Government to implement or respond to its recommendations.⁴ The AHRC also does not have adequate funding to properly conduct its functions and activities. The UPR recommended at

¹ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding Observations CEDAW/C/SR.935 and 936, para 47.

<<http://daccess-ddsny.un.org/doc/UNDOC/GEN/N10/485/48/PDF/N1048548.pdf?OpenElement>>.

² UN Committee on the Elimination of all Forms of Discrimination against Women Concluding Observations CEDAW/C/SR.935 and 936, paras 18 and 19.

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/48/PDF/N1048548.pdf?OpenElement>>.

³ UN General Assembly Universal Periodic Review A/HRC/WG.6/10/L. 8, paras 86 and 87

<http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/Australia-A_HRC_WG.6_10_L.8-eng.pdf>.

⁴ See humanrightSACTIONPLAN.org.au.

86.27 that the AHRC should have adequate funding for this purpose. The Baseline Study and the Action Plan should reflect this recommendation. The Action Plan should also include a process for reviewing and strengthening the role and functions of the AHRC.

National gender equality monitoring, benchmarks and indicators

16. WLS NSW supports calls for independent monitoring and reporting of national gender equality benchmarks and indicators. We note that the Australian Bureau of Statistics released its first issue of Gender Indicators on 26 August 2011. The release of these indicators is a welcome achievement and the indicators should be included in the Baseline Study. However, these indicators do not replace the need for a more thorough and independent gender equality monitoring and benchmarking process. Further, the Gender Indicators are not disaggregated 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.
17. There is currently no 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 Australian Human Rights Commission, with its education and research function, would be well placed to conduct ongoing monitoring and reporting on gender equality benchmarks and indicators at a national level. However, with the exception of sexual harassment, the Sex Discrimination Commissioner has assessed that it is not in a position to assume this role under existing funding arrangements.⁵
18. The Baseline Study should note that the Senate Standing Committee on Legal and Constitutional Affairs has recommended that the *Sex Discrimination Act 1984* be amended to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality and to report to Parliament every four years.⁶ The Australian Government responded to the Senate Standing Committee on Legal and Constitutional Affairs' recommendation and stated that it "will consider similar statutory functions for the Sex and Disability Discrimination Commissioners, including the appropriate reporting cycle for all such reports, as part of the consolidation project".⁷ The Baseline study should also include the CEDAW Committee's recommendation that Australia consider expanding the mandate of the Sex Discrimination Commissioner to address all issues of gender equality.⁸
19. The Action Plan should include 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.

Anti-discrimination legislation

20. This section should also include the report and recommendations of the Senate Standing Committee on Legal and Constitutional Affairs in its 2008 Inquiry into the Effectiveness of the

⁵ Human Rights and Equal Opportunity Commission, Submission on the Inquiry into the Effectiveness of the Sex Discrimination Act 1984 (Cth) in *Eliminating Discrimination and Promoting Gender Equality* (1 September 2008), p 236.

⁶ The Senate Standing Committee on Legal and Constitutional Affairs, Report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality, (12 December 2008), recommendation 33.

⁷ Government Response to Senate Standing Committee on Legal and Constitutional Affairs' 2008 report into the effectiveness of the *Sex Discrimination Act 1984*, p 17.

⁸ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding Observations CEDAW/C/SR.935 and 936, para 21.

Sex Discrimination Act 1984, which the Australian Government has committed to consider as part of its anti-discrimination laws consolidation project. It should also reflect the CEDAW Committee's recommendation that the 2008 Senate Committee recommendations be implemented to ensure comprehensive protection against all forms of discrimination against women.⁹ See also CEDAW Action Plan Point 1b.

21. WLS NSW welcomes the Australian Government's commitment to enhance the anti-discrimination law and to include protections from discrimination on the grounds of sexual orientation and gender identity discrimination as recommended through the UPR process.
22. The Baseline Study should also reflect the recommendations from the CEDAW Committee¹⁰ and other United Nations mechanisms, as well as CEDAW Action Plan Point 1a, that this process should fill *all* gaps in protection and legislation and provide comprehensive protection to the rights of equality and non-discrimination.
23. The Action Plan should include the implementation of these recommendations and address 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 nations 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, and irrelevant criminal record. 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. 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.¹¹ Discrimination law must reflect this lived experience of women.

Human Rights Charter

24. The Australian Government has stated that it will not consider the issue of a comprehensive legal rights protection such as a Human Rights Act until at least 2014. 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 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 the Human Rights Council.¹² See also CEDAW Action Plan Point 1c.
25. The recommendations of the National Human Rights Consultation and the United Nation human rights mechanisms should be included in the Baseline Study and Action Plan.

⁹ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding Observations CEDAW/C/SR.935 and 936, para 21.

¹⁰ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding Observations CEDAW/C/SR.935 and 936, para 25.

¹¹ See Dasvarma, Amrita & Evelyn Loh, *Intersectional Discrimination, Beyond Tolerance: National Conference on Racism*. 12 - 13 March 2002. Human Rights and Equal Opportunity Commission.

<http://www.hreoc.gov.au/racial_discrimination/conferences/beyond_tolerance/speeches/dasvarma.html>.

¹² See UPR recommendation 86.22 and CEDAW Concluding Observations on Australia 2010, paras 24 and 25.

CH 2: HUMAN RIGHTS CONCERNS OF THE GENERAL COMMUNITY

Are there additional concerns that could be included in this section?

What additional statistical data or research findings could be included to better paint the human rights picture?

Access to justice and legal assistance services

26. Women suffer from unequal access to justice, particularly in relation to domestic and family violence. The Baseline Study should include further details about barriers and issues with access to justice for women in general, as well as for particular groups of women.

Aboriginal and Torres Strait Islander women

27. Access to justice is particularly limited for Aboriginal and Torres Strait Islander women, and women living in rural and regional areas. The 2006 Census reported that 21% of the Indigenous population lived in Inner Regional areas; 22% in Outer Regional areas; 10% in Remote areas and 16% in Very Remote areas compared to less than 2% of non-Indigenous population living in Remote and Very Remote areas.¹³ The 2004 Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice reported that there is significant:

evidence concerning Indigenous women's chronic disadvantage in their ability to access justice, including in relation to domestic/family violence and sexual assault. In this regard, the committee considers it highly important for governments to provide Indigenous women with appropriate victim support measures, as well as addressing their legal needs.¹⁴

28. The CEDAW Committee has recognised that Aboriginal and Torres Strait Islander women have a more restricted access to legal aid services (paragraph 40) and recommends that the Australian Government fund culturally appropriate Aboriginal and Torres Strait Islander women's legal services to ensure that they have access to justice (paragraph 41). See also CEDAW Action Plan Point 11.

29. In addition, we refer to the 2009 ICCPR Concluding Observations which recommended that the Australian Government take effective measures to ensure equality in access to justice by providing adequate services to assist marginalised and disadvantaged people, including Aboriginal and Torres Strait Islander people and migrants. Effective measures to be taken include adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.¹⁵ UPR recommendation 86.92 also requires an increase in the provision of legal advice to Aboriginal and Torres Strait Islander peoples with due translation services reaching especially Aboriginal and Torres Strait Islander women of the most remote communities.

Culturally and linguistically diverse women

30. The Baseline Study should reflect the particular difficulties that culturally and linguistically diverse (CALD) women have in accessing justice. WLS NSW has published two reports on this topic – *Quarter way to equal* (1994) and *Long way to equal* (2004).¹⁶

¹³ Australian Bureau of Statistics, *Population Characteristics, Aboriginal and Torres Strait Islander Peoples 2006*, ABS cat no 4713.0 (2008) p 13.

¹⁴ Senate Legal and Constitutional Affairs Committee (2004) *Inquiry into Legal Aid and Access to Justice*, p xix.

¹⁵ UN Human Rights Committee Concluding Observations CCPR/C/AUS/CO/5 2 April 2009 para 25.

¹⁶ Available at <http://www.womenslegalnsw.asn.au/downloads/ALONGWAYTOEQUALWeb_000.pdf>.

31. The *Long Way to Equal* research showed that while the needs of migrant and refugee women are by no means static, overwhelmingly the legal access barriers identified by the *Quarter Way to Equal* report, ten years prior, remain significant sources of difficulty for migrant and refugee women in their interactions with the Australian legal system. These barriers included limited finances to fund legal cases; low levels of English language; lack of knowledge about the legal system and legal services; the availability of legal aid; difficulties with the provision of interpreters and translations; and generally a lack of sensitivity to the needs of CALD women.
32. Other organisations have also published reports on barriers faced by CALD women in accessing justice. For instance, the report *Culturally and Linguistically Diverse Women in the ACT: Enablers and Barriers to Achieving Social Connectedness* discussed issues for CALD women in accessing domestic violence accommodation services:

Domestic violence accommodation services reported that they frequently need workers to seek lawyers who will work pro bono because, at times, Legal Aid doesn't take on the cases of CALD women. Services explained that this was very time consuming because it can be difficult to find legal professionals in the ACT who are trained to work in a culturally appropriate manner. At present, many do not recognise the emotional and cultural implications involved for women in cases such as divorce.¹⁷

33. The Federation of Ethnic Communities' Councils of Australia has also identified barriers for CALD Australians in accessing legal services:

[T]he most vulnerable groups of CALD Australians are still experiencing barriers to services that deny them civil rights. The need for high level literacy and English proficiency creates a barrier for many people for both CALD and Indigenous communities in the areas of accessing legal services, health, housing and education.¹⁸

Women with disabilities

34. The Baseline Study should also reflect the barriers faced by women with disabilities in accessing justice. For example, Women with Disabilities Australia has reported that there is an:

acute lack of available gender and disability specific data, research and information - at all levels of Government and for any issue. This aspect of neglect of disabled women in Australia has been specifically identified by the United Nations as an area warranting immediate and urgent attention by the Australian Government.¹⁹

Issues in accessing legal aid

35. Women's access to justice is also affected by their access to legal aid. The Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice reported that a "reassessment of the application of the Commonwealth guidelines and priorities to determine grants of assistance is urgently required."²⁰ As the Committee states in the Report, while legal aid

¹⁷ Women's Centre for Health Matters Inc., *Culturally and Linguistically Diverse Women in the ACT: Enablers and Barriers to Achieving Social Connectedness* (2009), p. 27 <<http://www.wchm.org.au/CALDPublications.htm>>.

¹⁸ FECCA submission on Australia's compliance with articles 2-7 of the CERD Convention (2008) p 4 <http://www.fecca.org.au/submissions/2008/submissions_2008003.pdf>.

¹⁹ Women with Disabilities Australia, *Assessing the situation of women with disabilities in Australia: A human rights approach*, (July 2011) p. 6.

²⁰ Senate Legal and Constitutional Affairs Committee (2004) *Inquiry into Legal Aid and Access to Justice*, para 4.24

guidelines appear to be gender-neutral in that they do not distinguish between men and women applicants, the guidelines do not produce the same results for men and women in practice.²¹

36. Women continue to receive significantly less legal aid than men. For example, in the 2007-2008 financial year:
- NSW: 27.8% of legal aid case and in-house duty clients were women;²²
 - Vic: women received 36% of legal aid grants;²³
 - SA: women received 27% of legal aid grants;²⁴
 - WA: women received 31% of legal aid grants;²⁵
 - ACT: women received 41% of legal aid grants (based on approved applications).²⁶
37. The lower levels of legal aid granted to women can be attributed to the higher level of legal aid funding provided to criminal law matters where men make up the vast majority of recipients. In the 2007-2008 financial year:
- NSW: 50.3% of Legal Aid NSW's overall budget was spent on criminal law services and 31.6% was spent on family law services;²⁷
 - Vic: over 60% of all grants of legal assistance were for criminal law matters;²⁸
 - Qld: 62% of applications approved were for criminal matters and 26% for family matters;²⁹
 - SA: 77% of legal aid granted was for crime matters and 18% for family matters;³⁰
 - WA: 63% of applications granted were for crime matters and 34% for family matters;³¹
 - Tas: 74% of applications approved in-house or assigned were for crime matters and 25% for family matters;³²
 - ACT: 54.14% of applications approved were for criminal matters and 31.45% for family matters;³³
 - NT: 70% of applications approved were for criminal matters and 23% for family matters.³⁴

²¹ Senate Legal and Constitutional Affairs Committee (2004) *Inquiry into Legal Aid and Access to Justice*, pp 46-48.

²² Legal Aid NSW (2008) *Annual Report 2007-2008*, p 26.

²³ Victoria Legal Aid (2008) *Annual Report 2007-2008*, p 17.

²⁴ Calculated from figures provided in Legal Services Commission of South Australia (2008) *Annual Report 2007-2008*, p 21.

²⁵ Calculated from figures provided in Legal Aid WA (2008) *Annual Report 2007/2008*, p 16.

²⁶ Legal Aid ACT (2008) *Annual Report 2007-2008*, p 27. The annual reports for Queensland, Northern Territory and Tasmania legal aids do not provide a gender breakdown of legal aid grants made, applications approved or legal aid services provided across all matter types. Queensland provides statistics on the gender breakdown for civil and family law matters only: Legal Aid Queensland, *Annual Report 2007-2008*.

²⁷ Legal Aid NSW (2008) *Annual Report 2007-2008*, pp 18 and 20.

²⁸ Victoria Legal Aid (2008) *Annual Report 2007-2008*, p 17.

²⁹ Legal Aid Queensland (2008) *Annual Report 2007-2009*, table 11.

³⁰ Calculated from figures provided in Legal Services Commission of South Australia (2008) *Annual Report 2007-2008*, p 21.

³¹ Calculated from figures provided in Legal Aid WA (2008) *Annual Report 2007/2008*, p 2.

³² Note: These are the 2006-2007 statistics: Legal Aid Tasmania, *Annual Report 2006-2007*. The 2007-2008 annual report is not available on Legal Aid Tasmania's website.

³³ Legal Aid ACT (2008) *Annual Report 2007-2008*, p 26.

³⁴ Calculated from figures provided in Northern Territory Legal Aid Commission, *Annual Report 2007-2008*, p 26.

Access to justice principles

38. As noted in the Baseline Study, there is a lack of high quality, consistent data about the civil justice system and that the Australian Government is exploring this issue with a view of developing strong civil justice policy and program reforms. The National Human Rights Action Plan and Baseline Study should include implementation of structures for proper recording and measuring of the enjoyment of human rights in Australia, including human rights indicators and the collection of disaggregated data by gender, race, age and disability to evaluate the human rights impact of laws, policies and practices. Gender based indicators and targets should also be included.

CH 3: THE HUMAN RIGHTS EXPERIENCE OF SPECIFIC GROUPS IN AUSTRALIA

39. Our comments on Chapter 3 have been structured as follows:

- Additional human rights issues for women (section 3.2 of the Baseline Study)
- Additional human rights issues women (other sections of the Baseline Study)
- Additional groups of women that should be included

Additional human rights issues for women (section 3.2 of the Baseline Study)

Are there any additional human rights issues that could be added which affect the specific groups identified in this section?

What further actions or desired outcomes would you include to protect or promote human rights?

Issues that a National Action Plan could address: What further actions or desired outcomes would you include to protect or promote human rights?

40. We disagree with the statement on page 19 of the Baseline Study that “most Australians do not face human rights issues”. Women account for more than half the population and face issues of systemic gender discrimination and inequality. Further, as noted in the Baseline Study (at page 31), one in three women experience physical violence at some time in their lives.

41. In general, further detail is needed in the Baseline Study 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.

42. The Baseline Study and 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 area, women from culturally and linguistically diverse backgrounds, and women identifying as lesbian, bisexual, transgender, transsexual or intersex. If these are addressed under different sections to women generally (section 3.2), cross-references to these sections should be included under section 3.2.

Gender equality

43. The following should also be reflected in the Baseline Study regarding gender equality:

- The Baseline study 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.³⁵
- 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*,³⁶ made numerous recommendations to improve pay equity and issues associated with increasing female participation in the workforce.

³⁵ Update to the Australian NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women, p. 7

<http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_NGO_Australia46.pdf>.

³⁶ 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).

- The Australian 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.
44. The National Human Rights Action Plan and Baseline Study should 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).
 - Point 4 regarding temporary special measures for Aboriginal and Torres Strait Islander women in public and political life.
 - 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.
 - 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.
45. 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 (para 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

46. The Baseline Study fails to mention that, as part of its discrimination laws consolidation project, the Australian Government is currently reviewing the Sex Discrimination Act in response to recommendations made by the Senate Standing Committee on Legal and Constitutional Affairs in its report on the effectiveness of the *Sex Discrimination Act 1984* (Cth).³⁷
47. 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.³⁸
48. This section of the Baseline Study, and the corresponding part of the Action Plan, should reflect the issues that we have raised above in our comments on Chapter 1 under the headings, 'Australian Human Rights Commission', 'National gender equality monitoring, benchmarks and indicators' and 'Anti-discrimination legislation'.

Family Violence

49. WLS NSW has a particular interest in ensuring that human rights are realised for women experiencing family and domestic violence. WLS NSW acknowledges the Australian Government's effort to reduce violence against women and children in its development of the National Plan to Reduce Violence against Women and their Children 2010-2022. However, WLS NSW is concerned that the Baseline Study does not sufficiently document the evidence of family violence against women generally and more specifically against different groups of Australian women.
50. WLS NSW reaffirms the National Council's statement 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".³⁹ Violence against women is a persistent widespread and national breach of human rights that must be addressed more thoroughly in the Baseline Study and National Human Rights Action Plan.

International recommendations

51. In particular, the Baseline Study and Action Plan should incorporate UPR recommendation 86.80, which has been accepted by the Australian Government, to implement the National Action Plan to reduce violence against women and their children, including through *an independent supervision mechanism that involves civil society organisations* and take into account the specific situation of Aboriginal and Torres Strait Islander women and migrants. 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). The implementation must also include adequate funding (see CEDAW Committee recommendation in para 29 and CEDAW Action Plan Point 5a).

³⁷ Senate Standing Committee on Legal and Constitutional Affairs in its report on its review of the Effectiveness of the Sex Discrimination Act 1984 (Cth): *Eliminating discrimination and promoting gender equality in Australia* (2008).

³⁸ 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.

³⁹ 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/pl.aspx#1>.

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

- Point 5c regarding the need to amend the family law system and legislation to better protect the safety of women and children.
- Point 5d regarding the need to make publicly available the information on the number and nature of reported cases of domestic violence, on conviction and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence.
- Point 5e regarding the need to review State procedures for crimes compensations available to survivors of human trafficking.
- Point 6 regarding the need to provide sufficient funding to alleviate violence-related homelessness.

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 Baseline Study and Action Plan:

- Strengthen efforts to combat family violence against women and children with a particular focus on Aboriginal and Torres Strait Islander communities (UPR 86.47 and 86.72).
- Address as a matter of priority the abuse and violence experienced by women with disabilities living in institutions or supported accommodation and undertake a comprehensive assessment of the situation of women with disabilities in Australia (CEDAW paras 42 and 43).
- Develop strategies to prevent homelessness resulting from domestic violence and ensure that women who are victims of domestic and family violence and their children are provided with appropriate ongoing accommodation and integrated support (UPR 86.82, CEDAW paras 29, 41 and 45).
- Amend legislation to better protect the safety of women and children (UPR 86.74 and CEDAW para 41).

Australian Law Reform Commission recommendations

54. The Baseline Study should provide greater detail of the findings and recommendations of the Australian Law Reform Commission (ALRC) Final Report *Family Violence—A National Legal Response*, launched on 11 November 2010. This report aims to improve the legal frameworks and practice in relation to family violence, and more importantly, demonstrates how these laws interact with Commonwealth laws relating to family violence, such as the *Family Law Act*. Evidence from the ALRC Final Report demonstrates how family violence is a national issue requiring immediate action:

Some groups of women within rural and remote communities experience particularly high rates of domestic violence. For example, [...] the proportion of Aboriginal and Torres Strait Islander people in remote areas who said that they, their family or friends had witnessed violence is three times as high as for Aboriginal and Torres Strait Islander people in non-remote areas. [...]

In addition, the experience of violence in childhood also has a profound and compounding effect on the incidence of violence in adults: [w]itnessing or experiencing violence as a child increases sharply the risk of becoming a perpetrator or victim of violence in later life. Women who experience abuse as a child are one-and-a-half times more likely to experience violence, and twice as likely to experience sexual violence as an adult than those who have not. Women who are

physically and sexually abused in childhood also have an increased risk of being sexually abused in adulthood.⁴⁰

55. The ALRC Final Report provided numerous recommendations with respect to the issue of domestic violence, which should be included in the National Human Rights Action Plan and the Baseline Study.

Reforming the family law system to protect women and children from violence

56. The Baseline Study also fails to mention the urgent need to address the failure of the family law system to protect adequately women and children from family violence.
57. The Family Law Legislation Amendment (Family Violence and Other Measures) Bill, which is currently before Parliament, forms a partial response to several government-commissioned, independent reports, including the *Evaluation of the 2006 family law reforms* by the Australian Institute of Family Studies (AIFS), *Family Courts Violence Review* by Professor Richard Chisholm, and *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* by the Family Law Council. These reports indicate that the current family law legislation fails to adequately protect children and other family members from family violence and child abuse.
58. Other research reports on family violence, shared care and infant development further provide a strong evidence base for the need for further reform. These reports are: *Family Violence and Family Law in Australia: the Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006* collaboratively produced by Monash University, the University of South Australia and James Cook University, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms* by the Social Policy Research Centre of the University of New South Wales, and *Post-separation parenting arrangements and developmental outcomes for infants and children* by Jennifer McIntosh, Bruce Smyth, Margaret Kelaher, Yvonne Wills and Caroline Long.⁴¹
59. The findings of these reports should be reflect in the Baseline Study and the Action Plan should include further actions to ensure that the family law system functions to protect women and children from violence.

Domestic violence death reviews

60. The Baseline Study and Action Plan should also address the need for effective and joined up domestic violence death reviews across Australia. WLS NSW supports the recommendations on death reviews made by the Federation of Community Legal Centres Victoria in its submission on the Baseline Study, including 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. We refer the Department to the Federation's submission for further detail on this point.

⁴⁰ Australian Law Reform Commission, Final Report *Family Violence—A National Legal Response* p 85 <http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf>.

⁴¹ See The Parliament of the Commonwealth of Australia House of Representative, Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011: Explanatory Memorandum.

Additional human rights issues for women (other sections in Chapter 3)

Are there any additional human rights issues that could be added which affect the specific groups identified in this section?

What further actions or desired outcomes would you include to protect or promote human rights?

Issues that a National Action Plan could address: What further actions or desired outcomes would you include to protect or promote human rights?

61. It is imperative that the National Human Rights Action Plan and the Baseline Study takes a gendered perspective throughout. That is, both documents must acknowledge the different life experiences of different groups of women, including the additional disadvantaged some groups of women face because of compound and intersectional discrimination. The Baseline Study and 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 (section 3.1)

62. 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.⁴² 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.⁴³

63. The Baseline Study 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.

Right to self-determination and consultation

64. The Australian Government must at all times consult with Aboriginal and Torres Strait Islander peoples on 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 importantly, the Australian Government must ensure that the views of Aboriginal and Torres Strait Islander women are heard regarding these matters. 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 development programs and political and policy issues.

Freedom from violence

65. As noted in the Baseline Study, Aboriginal and Torres Strait Islander women experience family violence at a significantly higher rate than non-Indigenous women.⁴⁴ It has been reported by the CEDAW Committee that:

⁴² Australian Human Rights Commission, *Beyond Tolerance: National Conference on Racism*, 2002, viewed 11 July 2011 <http://www.hreoc.gov.au/racial_discrimination/conferences/beyond_tolerance/speeches/dasvarma.html>.

⁴³ 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) <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Australian_ATSI_Women.pdf>.

⁴⁴ <<http://www.humanrightsonline.org.au/nhrap/focus-area/aboriginal-and-torres-strait-islander-peoples>>.

despite strengthened efforts to address the issue [...], socio-economic indicators consistently show that the Aboriginal and Torres Straits Islander communities continue to be among the most disadvantaged among Australians, with indigenous women being particularly disadvantaged. [...] Indigenous women and girls face the highest levels of violence, especially at home where indigenous women are 35 times as likely to be hospitalized as a result of family violence-related assaults as non-indigenous females.⁴⁵

Access to justice

66. Aboriginal and Torres Strait Islander women and children remain chronically disadvantaged in terms of their access to justice, especially in regards to situations of family violence. The Baseline Study should note the Senate Legal and Constitutional Affairs Committee's recognition of the chronic disadvantage faced by Aboriginal and Torres Strait Islander women (and children) in their ability to access justice, including justice in relation to domestic/family violence and sexual assault.⁴⁶

Issues that a National Action Plan could address

67. The National Human Rights Action Plan and Baseline Study 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 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.

68. 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 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).

⁴⁵ UN Committee on the Elimination of all Forms of Discrimination against Women Concluding observations CEDAW/C/SR.935 and 936, para 40.

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/48/PDF/N1048548.pdf?OpenElement>>.

⁴⁶ 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>.

- Implement specific strategies within the National Plan to Reduce Violence against Women and Children to address violence against Aboriginal and 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 (section 3.3)

69. The section in the Baseline Study 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 amongst the next generation;
- promoting, 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).

70. The National Human Rights Action Plan and Baseline Study 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.

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

- Allocate resources to encourage females to pursue programs of study and professional development in areas that are traditionally dominated by men (CEDAW para 37).
- Allocate resources to encourage females 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 (section 3.5)

72. WLS NSW supports the submission of Hawkesbury Nepean Community Legal Centre on the actions that should be included to address discrimination in this area. We refer the Department to their submission for further details on this point.

Homeless women (section 3.6)

73. WLS NSW commends the Australian Government for its formal recognition of the links between homelessness and domestic violence. However, it fails to acknowledge the difficulties that women experience in trying to obtain appropriate supported and subsequent accommodation.

74. WLS NSW supports the implementation of measures to assist women escaping domestic violence to stay in their homes with the perpetrator leaving.⁴⁷ The Baseline Study states that all Australian jurisdictions now have laws that allow courts to issue exclusion orders as a condition of domestic violence orders. The Baseline Study and Action Plan should also include mechanisms to collate data regarding this issue to fully assess how many applications for exclusion orders are lodged and how many exclusion orders have been granted at the interim and final order stages.

75. The paragraphs in this section on the priority groups of women and older Australians do not 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.⁴⁸

76. The National Human Rights Action Plan and Baseline Study 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, including by a 20 per cent reduction in the turn-around rate of family violence sheltered by 2012 and the implementation of specific and culturally appropriate measures to alleviate homelessness for Aboriginal and Torres Strait Islander women.

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

- Develop effective strategies to prevent homelessness resulting from domestic violence and ensure that women who are victims of 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 (section 3.7)

78. As mentioned elsewhere, there remains a need for more disaggregated data for specific groups of women with disabilities, including Aboriginal and Torres Strait Islander women, CALD women, rural and remote women and lesbian, bisexual, transgender, transsexual or intersex

⁴⁷ Women's Legal Services, Universal Periodic Review of Australia: Issues for inclusion in Australian Government's Report Submission <http://www.womenslegalnsw.asn.au/downloads/law-reform/2010WLSNSW_AGD_UPR.pdf>.

⁴⁸ 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.

women, and this should be reflected in the Baseline Study and Action Plan. According to Women with Disabilities Australia:

one of the greatest difficulties in determining and substantiating the needs and human rights violations of women with disabilities in Australia is the acute lack of available gender and disability specific data, research and information - at all levels of Government and for any issue. This aspect of neglect of disabled women in Australia has been specifically identified by the United Nations as an area warranting immediate and urgent attention by the Australian Government.⁴⁹

79. Disaggregated data is required on the following human right issues: freedom from forced sterilisation, abuse in institutions, freedom from exploitation, violence and abuse, the right to found a family and to reproductive freedom, the right to work, the right to an adequate standard of living, the right to participate in political and public life, the right to health, the right to education, the right to access to justice and the right to equal recognition before the law, intersectionality as well as general data and statistics regarding women with disabilities.⁵⁰
80. The Baseline Study and Action Plan should also includes details of the underrepresentation of women with disabilities in leadership and decision-making positions, in public and political life, and in equal access to education, employment and health (see CEDAW Concluding Observations para 26), and actions to address this human rights issue.
81. The paragraphs in the Baseline Study on non-therapeutic sterilisation should include the fact that both the UPR and CEDAW reviews produced 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 Department 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.⁵¹
82. The National Human Rights Action Plan and Baseline Study 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.

⁴⁹ Women with Disabilities Australia, Assessing the situation of women with disabilities in Australia – a human rights approach (July 2011), p.6.

⁵⁰ See Women with Disabilities Australia, Assessing the situation of women with disabilities in Australia – a human rights approach (July 2011), pp 17-41.

⁵¹ Women with Disabilities Australia's Submission to the United Nations Special Rapporteurs regarding forced sterilisation in Australia (June 2011) <http://www.wwda.org.au/WWDA_Submission_SR2011.pdf>.

83. 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:

- 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 sterilization 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, 86.39 and CEDAW para 43).

Women carers (section 3.8)

84. The Baseline Study should reflect that women predominantly take on the responsibilities of carers.⁵² Consequently, this contributes to women's low participation in the workforce, persistence in the unequal pay gap between women and men, lack of superannuation funds in later years, etc.

Women in prison (section 3.9)

85. The Baseline Study should include gender specific data with respect to people in prison. Furthermore, the study should include data of specific groups of women in prison. 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.⁵³ Approximately 10% of women prisoners in Queensland were not born in Australia, and 14% are from culturally and linguistically diverse backgrounds.⁵⁴ Despite these figures, there is a severe lack of comprehensive, gender-specific data about women in Australian prisons generally.⁵⁵ There is also 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.⁵⁶

86. The Baseline Study and Action Plan should also 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. Given the very high number of survivors of domestic

⁵² Australian Bureau of Statistics. Disability, Aging and Carers Australia: Summary of Findings, 2003 (15 September 2004) Cat. No. 4430.0
<[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)>.

⁵³ 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.

⁵⁴ Sisters Inside Inc., Women Prisoner's Human Rights (June 2009), page 29.
<<http://www.sistersinside.com.au/media/FINAL%20%20National%20HR%20Submission%20June%202009.pdf>>.

⁵⁵ Note 54, p 5.

⁵⁶ See note 54, generally.

violence and sexual assault (over 80%)⁵⁷ many who have survived child sexual assault – the NSW government has severely neglected mental health services and counselling for victims. It would appear the approach of the NSW Corrective Services and Justice Health is one of maintenance rather than treatment. We note in Australia's recent UPR appearance recommendation 86.82 states: "Ensure that all victims of violence have access to counselling and assistance with recovery." We submit this includes women in prison. We acknowledge that there has been some limited provision for counselling at a few prisons in NSW as part of a pilot program. We understand that there are still issues with service provision and limits on what can be discussed, even within that pilot. It is well known that a failure to deal with issues of violence increases the likelihood of recidivism.

87. The Baseline Study and 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. Issues in accessing legal services include the level of service provided to female prisoners (in comparison to male prisoners), the quality of the service provided, the frequency of services, access to interpreting services for face-to-face legal advice, and illiteracy in English and other languages making translation of legal documents difficult.
88. Furthermore, the Baseline Study and 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 and not always encouraged.
89. The National Human Rights Action Plan and Baseline Study 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).
 - 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 and migrants (section 3.10)

90. The Baseline Study should more specifically address the human rights issues of women refugees, asylum seekers and migrants as well as CALD women. The Australian Immigrant and Refugee Women's Alliance reports that in 2006:

the percentage of [CALD] women living in Australia accounts for 40% of total population. Despite the high percentage of CALD women living in Australia, immigrant and refugee women continue to face multiple barriers to equal participation in the workforce and in the wider

⁵⁷ Lawrie, R, Speak out speak strong: researching the needs of Aboriginal women in custody (2003).

community. Many of these barriers are systemic in nature, indicative of intersecting discriminations arising due to cultural, religious and linguistic background as well as gender.⁵⁸

91. Furthermore, the *CEDAW Action Plan* states that CALD women living within Australia experience multifaceted and intersectional discriminations which are not adequately accounted for by Australia's anti-discrimination legislation:

while the commitment to eradicating racial discrimination and sex discrimination is strong it is only recently that an understanding of the 'intersectional' nature of discrimination has been recognised. Intersectional discrimination recognises that a women may be subjected to discrimination based on several aspects of their identity at the same time. The human rights system struggles with the idea of intersectional discrimination because of the distinct nature and subject matter of each treaty.⁵⁹

92. See also our comments above under Access to Justice.

93. The National Human Rights Action Plan and Baseline Study 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.

94. 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:

- 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).

⁵⁸ Australian Immigrant and Refugee Women's Alliance, AIRWA's Submission to the Joint Standing Committee on Migration: Inquiry into Multiculturalism in Australia (April 2011), p 4.
<<http://www.airwa.org/res/AIRWA's%20Submission%20to%20the%20Joint%20Standing%20Committee%20on%20Migration.pdf>>.

⁵⁹ CEDAW Action Plan for Women in Australia (March 2011), p 33.

Additional groups of women that should be included

Are there additional specific groups that could be included in this section?

What additional statistical data or research findings could be included to better paint the human rights picture for a specific group?

Issues that a National Action Plan could address: What further actions or desired outcomes would you include to protect or promote human rights?

Rural women

95. The Baseline Study does not refer to the human rights experiences of rural women, either as part of the section on women or elsewhere.
96. The human rights of women in rural and regional Australia should also be included in the National Human Rights Plan and Baseline Study because this group is subject to intersectional discrimination 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.
97. According to the National Rural Women's Coalition “[a]bout one-third of all Australian women live in rural areas. [they] are a basic component of the Australian population, and one which makes a very significant contribution to its economy. The demarcation between rural and urban women in Australia should be about geography not disadvantage. The difference lies in the distribution of the resources and opportunities.”⁶⁰
98. The National Human Rights Action Plan and Baseline Study 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).
 - Implement specific strategies within the national plan to address violence against Aboriginal and Torres Strait 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).

⁶⁰ National Rural Women's Coalition < <http://www.nrwc.com.au/news/what-rural-women-want/> >.

ATTACHMENT A: CEDAW ACTION PLAN

A 15 Point Action Plan for Implementing the 2010 CEDAW Concluding Observations⁶¹

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 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

⁶¹ 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.

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.

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.

* 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, dated 14 January 2011: see <http://awava.org.au/>.

- 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.