



## Endorse the CEDAW Shadow Report

WRANA is seeking organisational endorsement for the CEDAW Shadow Report. While we recognise that many individual women and men contribute greatly to the struggle for women's human rights we lack the capacity to collate individual as well as organisational endorsements.

### *Step One*

- 10 Read the report. Your organisation must endorse the report in its entirety.

### *Step Two*

Email the name of your organisation, a contact person and a contact phone number to [endorseit@hotmail.com](mailto:endorseit@hotmail.com) by 1 December 2005.

## Other ways to support the Women's Report Card Project

1. Agree to act as a media spokesperson on the issues your organisation works on at the time of the CEDAW review
  2. Donate to WRANA to send a strong delegation to NY for the review in January 2006.
- 20

Email us at [endorseit@hotmail.com](mailto:endorseit@hotmail.com) if you would like to discuss either of these options.

**Australian NGO Shadow Report  
on the Implementation of the  
Convention on the Elimination of  
All forms of Discrimination  
Against Women (CEDAW)**

30

**October 2005**

**Prepared by the Women's Rights Action  
Network Australia**

**With the endorsement of XXX Organisations**

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There have been clear improvements in the status of women during this reporting cycle. The Australian Government Report identifies many of these. Our Shadow Report also acknowledges positive developments. Nonetheless, this report also documents a range of challenges which remain if CEDAW is to be fully realised for all women in Australia.

80 This report brings to the United Nations the voices of over 1000 women in Australia, from more than 60 consultations. These consultations have identified the issues raised in this report. There are seven key areas of concern for women in Australia. We have outlined key issues below.

### **Violence Against Women**

We welcome programs and policies which address violence against women, and leadership that the Australian Government and State/Territory Governments have shown in efforts to eliminate violence against women, including “whole of government” plans/approaches. Important initiatives across a range of sectors have been launched or strengthened, for example, a recommitment by police forces to addressing violence against women and, following allegations of sexual assault, efforts by a major sporting code to stamp out violence against women.

90 Community concern exists, however, about the inappropriateness of refuge options for some women escaping violence. Women from culturally and linguistically diverse backgrounds, women with disability and Indigenous women report that they are not adequately supported in the majority of women’s refuges. Violence against Indigenous women continues to occur at unacceptable levels, with the problem exacerbated by inadequate and inappropriate responses from support agencies.

The level of successful prosecutions for sexual assaults remains appallingly low. Factors contributing to this include an inappropriate legal framework, attitudes of the police, prosecutors and judiciary, a reliance on jury trials, and processes and procedures which mitigate against successful prosecutions and re-traumatise women.

100 The Australian Attorneys-General have agreed to develop a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors with a decision making disability. Concerns were raised that the current process could result in a means to authorise the sterilisation of girls with disability for contraceptive purposes and menstrual management.

*We recommend that the CEDAW Committee*

- ⇒ Welcome the leadership and program innovations of all levels of government and community in the area of violence against women
- ⇒ Call for federal, state and territory governments to work collaboratively to address the legal, policy, attitudinal and social support barriers to prosecution of sexual assault
- ⇒ Encourage governments to provide specialist training of emergency accommodation and domestic violence service workers to meet the service provision and accommodation requirements of women with disability, women from culturally and linguistically diverse communities and Indigenous women
- 110 ⇒ Urge federal, state and territory governments to engage in consultation with Indigenous women, particularly those living in remote and regional communities, to develop culturally appropriate domestic violence and support services
- ⇒ Assert to the Australian Attorney-Generals that any uniform approach to the sterilisation and reproductive rights of women and girls with disability should prohibit sterilisation of girls with disability under the age of 18 years unless there is a serious threat to life or health, and prohibit sterilisation of women with disability in the absence of informed consent unless there is a serious threat to life or health

## Leadership and Political Participation

120 Various state/territory governments have demonstrated an increased commitment to using the CEDAW framework in developing action plans for women, and state/territory and federal governments have initiated programs to increase the number of women on government and private sector boards. Policy advocacy by women's organisations has been supported by the creation of four National Women's Secretariats.

Nonetheless, women are still under-represented in formal structures such as parliaments, boards and senior management. Programs are required which will build on the leadership and political skills women and girls learn in their communities, families and playgrounds and which will encourage them to take up formal leadership and political roles.

130 The abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) removes a directly elected representative voice for Indigenous women, further limiting their opportunities for political participation.

The Government must recognise and address barriers to participation faced by many women. Cost of participation, whether in technology, travel or work foregone, are significant barriers for women particularly those on low-incomes, women with disability and women from rural and remote areas.

It is important that we recognise and reverse attacks that have weakened women's policy machinery within governments.

*We recommend that the CEDAW Committee*

- ⇒ Welcome the funding of the four national women's secretariats and recognise that this funding model could be strengthened through the development of national women's secretariats specifically representing Indigenous women and women from migrant and refugee backgrounds
- 140 ⇒ Urge the Australian Government to take measures to finance and implement policies and action plans to engage Indigenous women's in the wake of ATSIC's demise
- ⇒ Affirm that the machineries for women should be located at the highest possible level of government, in both national and sub-national governments

## Law and Justice

The Australian Government is to be commended for the work done to implement a comprehensive legislative and programmatic framework to address trafficking of women into Australia. Important changes have seen the release of families from Immigration Detention Centres. State and territory governments are to be congratulated for the adoption of legislation to recognise same-sex relationships (pending in South Australia).

150 However, there remains no constitutional entrenchment of equality for women at the federal level. Australia has not ratified the Optional Protocol to CEDAW and has no plans to do so.

Changes in legal arrangements around shared parenting, connected to a move away from litigation and towards cooperative parenting, will disadvantage women leaving violent domestic situations. It is feared that the emphasis on shared parenting will undermine rather than enhance the best interests of children who have lived with domestic violence. Proposed changes to increase the power of the Child Support Agency are beneficial, but still fall short of the recommendations included in the government's own report ("Every Picture Tells a Story") on the issue.

160 Amendments to the *Marriage Act 1961* (Cth) clarified that only marriages between a man and a woman will be recognised in Australia. Consequently, access to Medicare, PBS Safety Nets and welfare payments have been limited at the federal level. The *Sex Discrimination Act 1984* (Cth) does not prohibit discrimination on the basis of sexuality. States/territories continue to discriminate against same-sex couples by barring access to artificial reproductive technology and adoption.

*We recommend that the CEDAW Committee*

- ⇒ Urge federal, state and territory governments to develop Bills of Rights or constitutional change with provisions for substantive equality including economic, social and cultural rights
- ⇒ Call for the Australian Government to ratify the Optional Protocol to CEDAW
- ⇒ Express concern over the potential adverse impact as a result of the *Family Law Amendment (Shared Parental Responsibility) Bill* (Cth) and commend the recommendations on child support in *Every Picture Tells a Story*
- 170 ⇒ Express concern at the current levels of discrimination against lesbians, gay men, bi-sexual, intersex and transgender people in law and policy, and encourage governments to address exemptions in their anti-discrimination framework and law, particularly in the areas of social security, medical benefits and superannuation
- ⇒ Call for review of the *Sex Discrimination Act 1984* (Cth) to prohibit discrimination on the basis of same-sex relationships

### **Housing and Utilities**

The issue of housing and public building accessibility for women with disability was raised during the consultations around Australia. In particular concerns at the lack of a national code on accessibility in housing, and exemptions currently being considered in the drafting process for the

180 *Disability Standards for Access to Premises*.

Discrimination against women in the public housing, private rental and financial sector detrimentally affects women's realisation of their right to housing. In the financial sector women reported a range of discriminatory practices which had a detrimental impact on their capacity to secure a loan for housing. Limitations to state/territory legislation on residential tenancies and forced evictions were reported.

*We recommend that the CEDAW Committee*

- ⇒ Recommend to the Attorney-General that a national code for universal housing design be developed and adopted
- ⇒ Recommend to the Australian Building Codes Board and the Attorney-General that the
- 190 *Disability Standards for Access to Premises* be adopted in an open and transparent process, and ensure that provisions for exemptions do not undermine the purpose of the *Disability Discrimination Act*
- ⇒ Recommend to state/territory governments to review *de facto* and *de jure* discriminatory practices in public housing programs, private rental, and the financial sector

### **Health**

We congratulate the ACT Government on the decriminalisation of abortion. We welcome the broad range of policies and programs in the area of women's health.

We note that women have been disproportionately impacted by the redirection of health funding from the public to the private system, especially women with disability, women and children in

200 areas of high socio-economic disadvantage and in rural, regional and remote Australia.

Indigenous women in rural and remote areas reported extreme difficulty in accessing basic health services. Women with disability reported difficulty accessing mainstream health services due to the physical inappropriateness of medical equipment, costs, and the manner in which the procedures are performed. Women from culturally and linguistically diverse backgrounds and Indigenous women reported difficulties in accessing linguistically appropriate health information and interpreters, and reported a lack of cultural sensitivity and discrimination in mainstream health services.

*We recommend that the CEDAW Committee*

- ⇒ Acknowledge that Australia's system of unique health insurance is integral to supporting women's realisation of their substantive right to health access. Accordingly, Medicare should
- 210 be supported as the primary health service provider to the Australian population

- ⇒ Urge governments to integrate the needs of women with disability into the development of standards and service specifications for all health services
- ⇒ Call for state/ territory governments funding formulas for language service provisions in the health sector to better reflect community need, and that funding be provided for training in cultural sensitivity for health service providers
- ⇒ Call for abortion to be decriminalised in all jurisdictions; funding for termination of pregnancy to be increased; and for barriers to sexual health services and education for women in rural, regional and remote areas to be addressed, including by authorising RU486

### **Education**

- 220 Consultation shows that educational outcomes and opportunities for Indigenous women are still unacceptable. A lack of culturally appropriate education, inadequate support for young women with children to stay in school, and prohibitive costs mean that education opportunities for Indigenous women are not improving.

Increases in fees for tertiary education, and the loss of services predicted as part of the abolition of compulsory services fees mean that higher education will be less accessible for women.

*We recommend that the CEDAW Committee*

- ⇒ Advise that federal, state and territory governments support and fund culturally and linguistically appropriate education programmes in schools, including appropriate and proper training for teachers
- 230 ⇒ Propose that the Australian Government address the gender-differentiated impact of HECS
- ⇒ Propose that universities should either be allowed to levy a general services fee to provide student services or should be allowed to fund those services out of general revenue

### **Economic Security and Employment**

The Australian Government is to be congratulated on the introduction of a universal maternity payment.

The Australian Government is currently considering a range of changes to the welfare support system which will have a particular adverse impact on sole parents and women with disability. The changes are aimed at increasing the workforce participation levels of sole parents and people with disability.

- 240 Under the current Government, Australia has moved from a centralised collective workplace bargaining system to individualised bargaining. Recently proposed changes include reducing minimum conditions for employment, structural changes to the way minimum wages are set, and an increased preference for *Australian Workplace Agreements* (the individual contract system introduced in 1996). Figures already show economic disadvantage and a lack of family-friendly work provisions for women working under AWAs, which could become more widespread.

*We recommend that the CEDAW Committee*

- ⇒ Recommend that the Australian Government commit to a “no disadvantage” principle in implementing the “welfare-to-work” and the industrial relations changes
  - ⇒ Call for a gender-based analysis of all changes before they are introduced
- 250 ⇒ Support the research and recommendations of the federally-funded women’s secretariats in relation to these changes

This report brings to the United Nations the voices of over 1000 women from more than 60 consultations conducted in Australia. Developed during a three year period we have traversed rural, regional, remote and urban Australia. We have consulted with women in a number of languages as well as prepared materials in Braille, large-print format and audio. And we have relied on the good grace and volunteer hours of many, many women.

260 The *Women's Report Card Project* was coordinated by a volunteer working group of the Women's Rights Action Network Australia (WRANA). This Shadow Report is but a small part of the *Women's Report Card Project*. In each state and territory members of the *Women's Report Card Project* met to increase their knowledge of CEDAW and to use it as a framework to assess circumstances for women in their community. Some women were representing agencies or organisations, including refuges, domestic violence services, refugee organisations, Indigenous women's organisations, migrant women's groups, health care services, older women's groups, educational institutions, unions, youth agencies, disability organisations and legal services. Others were individual participants. Each state/territory produced a report focusing on seven key issues (Violence Against Women, Education, Housing and Utilities, Health, Leadership and Political Participation, Law and Justice, Economic Issues).

270 Indigenous women participated in many of the state and territory consultations. Specific Indigenous women's consultation processes have also been pursued to ensure that the particular experiences of Indigenous women were reflected in this report. A separate Indigenous women's report has been coordinated by Koorie Women Mean Business and the National Network of Indigenous Women's Legal Services. Key recommendations have been integrated into this report.

The CEDAW Shadow Report has been prepared with the following parameters in mind:

- ⇒ To reflect the diversity of women we consulted with and to represent fairly the views expressed by women across the country during the consultation process
- ⇒ To acknowledge positive developments, ongoing challenges and recommendations for change
- ⇒ To address recommendations to all levels of government, in recognition of the federated structure of the Australian political system
- 280 ⇒ To recognise that reporting (ideally) occurs within a four-year cycle, and to put forward information and recommendations that reflect anticipated issues for the 2005-2009 period

This CEDAW Shadow Report draws from all the reports and the consultation process more generally. We have also benefited from specialist insight provided by a number of women's and human rights organisations, including welfare, community and social service agencies.

290 Throughout the *Women's Report Card Project* we have maintained an open and transparent relationship with the Government, in particular the Australian Government Office for Women. As part of the project we have: contributed a review of previous Concluding Comments to the government's preparation of the 4<sup>th</sup> and 5<sup>th</sup> Periodic Report; prepared briefing materials for the NGO sector on the process; been in communication with the Minister Assisting the Prime Minister for Women's Issues, informing her about the project, sending her updates and a copy of the National Community Report. We have also been in correspondence with other relevant Ministers about the questions submitted to the CEDAW Committee. Information from their responses appears here as appropriate.

The final step of the *Women's Report Card* will be to bring the CEDAW Committee Concluding Comments home, and to use them to achieve change in the next four year period.

## Guide to Acronyms used in Australian NGO Shadow Report

ABS	Australian Bureau of Statistics	KWMB	Koori Women Mean Business
ACT	Australian Capital Territory	MBS	Medicare Benefits Schedule
AFHO	Australian Federation of Homelessness Organisations	NATSEM	National Centre for Social and Economic Modelling
AFP	Australian Federal Police	NESB	Non-English Speaking Background
AGGI	Ad Hoc Advisory Group on Gender Integration	NGO	Non-Government Organisations
AIRC	Australian Industrial Relations Commission	NNIWLS	National Network of Indigenous Women's Legal Services
APEC	Asia Pacific Economic Cooperation	NPY	Ngaanyatjarra Pitjantjatjara Yankunytjatjara
APS	Australian Public Service	NRWC	National Rural Women's Coalition
ASAS	Asylum Seekers Assistance Scheme	NSW	New South Wales
ATSIC	Aboriginal and Torres Strait Islander Commission	NT	Northern Territory
AWA	Australian Workplace Agreement	NWHP	National Women's Health Program
BCA	Building Code of Australia	ODA	Overseas Development Assistance
CALD	Culturally and Linguistically Diverse	OECD	Organisation for Economic Cooperation and Development
CC	Concluding Comments	OfW	Australian Government Office for Women
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	OP	Optional Protocol
CEO	Catholic Education Office	PADV	Partnerships Against Domestic Violence
CJSV	Criminal Justice Stay Visa	PBS	Pharmaceutical Benefits Scheme
CSA	Child Support Agency	PFA	Platform for Action
Cth	Commonwealth	PHOFA	Public Health Outcomes Funding Agreement
DAC	Development Assistance Committee	PPS	Parenting Payment Single
DDA	Disability Discrimination Act	Qld	Queensland
DIMIA	Department of Immigration, Multicultural and Indigenous Affairs	RRR	Rural, regional and remote
DoHA	Department of Health and Ageing	SA	South Australia
DSP	Disability Support Pension	SAAP	Supported Accommodation and Assistance Program
DV	Domestic Violence	Tas	Tasmania
FaCS	Department of Family and Community Services	TOP	Termination of pregnancy
FGM	Female genital mutilation	TPV	Temporary Protection Visa
FTA	Free Trade Agreement	UN	United Nations
GNI	Gross National Income	VAW	Violence Against Women
GP	General Practitioner	Vic	Victoria
HECS	Higher Education Contribution Scheme	WA	Western Australia
HREOC	Human Rights and Equal Opportunity Commission	WRANA	Women's Rights Action Network Australia
ICCPR	International Convention on Civil and Political Rights	WRCP	Women's Report Card Project
IDC	Immigration Detention Centre	WWDA	Women With Disabilities Australia
IVF	In-vitro Fertilisation	YWCA	Young Women's Christian Association

### **A Note on Terminology: Culturally and Linguistically Diverse (CALD) / Non-English Speaking Background (NESB) / Immigrant / Migrant Women**

300 These terms have all been used in this document, as they are all used by government, NGOs or communities, and remain the subject of debate. 'Non-English Speaking Background' (NESB) had until recently been the preferred term to describe people who have immigrated to Australia, or who descend from immigrants. The current terminology used by government is 'Culturally and Linguistically Diverse' (CALD), which recognises that cultural identification is more complex than linguistic background. The terms 'immigrant' and 'migrant' flag the unique socio-cultural space occupied by some women in Australia. However, these terms may have little applicability beyond the first generation, and even first generation immigrants may cease to see themselves as 'immigrants' after a period of time. There are some situations where one term is more appropriate than another; for instance using 'NESB' when speaking of barriers to employment or education, or

310 'immigrant' when speaking of the effect of a visa category.

## Articles 1 -3 Definition of discrimination against women, obligations to eliminate discrimination against women and advancement of women

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### Positive Developments

#### *Integrating CEDAW in state policy frameworks for women*

CEDAW obligations have been integrated in to state action plans on women, for example, the *ACT Women's Plan* integrates implementation of CEDAW obligations and PFA commitments,<sup>1</sup> as does the *NSW Government Action Plan for Women 2002-2004*.<sup>2</sup>

#### *Bills of Rights*

320 The Legislative Assembly of the Australian Capital Territory enacted the *Human Rights Act 2004* (ACT). The *Human Rights Act 2004* (ACT) does not consider economic, social and cultural rights, which is a serious limitation, but enshrines the principle of non-discrimination, including using discrimination on the basis of sex and sexual orientation as examples.<sup>3</sup>

#### *Actions to remove discrimination against lesbian, gay, transgender, intersex and/or queer people*

With the exception of South Australia (see discussion below) all states and territories in Australia have adopted legislation to recognise same-sex relationships. Different approaches are being taken towards recognition of same-sex relationships, for example, in 2003 the government of Tasmania adopted the *Relationships Act 2003* (Tas) which enables all same-sex and significant personal relationships to be registered with the Registry of Births, Deaths and Marriages.

330 In 2004 the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Cth) (superannuation is the mandated retirement savings program in Australia) enabled same-sex couples to claim identical tax-free entitlements to heterosexual couples.

### Challenges to the implementation of Articles 1-3

#### *Exemptions in the anti-discrimination mechanisms*

340 A range of significant exemptions to the *Sex Discrimination Act 1984* (Cth) exist. For example, exemptions have been granted to religious bodies (including educational institutions established for religious purposes), work in private households, voluntary bodies, sport and combat duties, and specific exemptions which may be granted by the HREOC for a period of not more than five years. The *Australian Government Report* and the *Beijing Plus Five Implementation Report* make no reference to the exemptions.

At the state/territory level, anti-discrimination frameworks also include exemptions, including for the religious practices of religious institutions, conduct in compliance with religious beliefs, work in a private household, work in a small business with five or less employees, provisions relating to working with children (this is particularly the case in relation to lesbians), and less favourable treatment based on the complainant's dress, appearance and behaviour.<sup>4</sup> State and territory governments have not addressed exemptions in the *Australian Government Report*.

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<sup>1</sup> Australian Capital Territory Government, "Act Women's Plan," (Canberra: ACT Government, 2004).

<sup>2</sup> New South Wales Government, "NSW Government Action Plan for Women 2003-2005," (Sydney: NSW Government, 2003).

<sup>3</sup> ACT Bill of Rights, Part 3.8.3

<sup>4</sup> Exemptions relating to working with children are found in Victoria, and in Queensland and the NT relate specifically to lesbians and gay men; dress and behaviour are found in Victoria and SA; religious exemptions are found in Victoria, SA, Queensland; small business in Victoria and NSW; private households in Victoria, NSW, Queensland, ACT, and NT. For an overview of exemptions as they relate to sexual orientation see Anna Chapman, Anna Chapman, "Australian Anti-Discrimination Law and Sexual Orientation: Some Observations on Terminology and Scope," *Murdoch University Electronic Journal of Law* 3, no. 3 (1996): footnote 47.

A number of the exemptions appear contrary to Australia's CEDAW obligations, including the exemption of women from combat duties, despite Australia's modified reservation to CEDAW on this issue.<sup>5</sup>

350 *CEDAW Committee consideration of the issue*

The CEDAW Committee requested clarification on the exemptions granted to religious institutions in their consideration of the second periodic report. No Concluding Comment specifically addressing this issue has been adopted.

*We recommend that the CEDAW Committee*

⇒ Issue a statement calling for review and reform/limitation of the exemptions. State/territory and federal law reform commissions could be called on to study the issue

***Human Rights Action Plan***

360 In December 2004 the Federal Government released *Australia's National Framework for Human Rights: National Action Plan*. While this report details what has been done to improve the protection and promotion of human rights, we have some concerns about the usefulness of the document, and its value as a plan. It tends to focus on the strength of Australia's current human rights protections rather than adopting a balanced assessment, and avoids addressing specific problems or setting targeted outcomes. There is also concern among the NGO sector that in the overview of the plan there is no recognition that discrimination does not only happen in discrete categories but that the intersections of race and gender or disability and gender present particular challenges in order to secure peoples human rights. There is also concern that young Australians are included under the heading of 'supporting the family' rather than 'addressing disadvantage and assisting independence'. Whilst we acknowledge that many young people reside with their families,  
370 it is important to acknowledge that many of the young people whose human rights are most at risk do not.<sup>6</sup>

*We recommend that the CEDAW Committee*

⇒ Call for the Government to develop a national action plan for the realisation of women's rights that includes specific targets, key performance indicators or an implementation timeline

***Downgrading the national machinery for the advancement of women***

380 In the 2005-2006 budget the Australian Government Office for the Status of Women, situated in the Office of the Prime Minister and Cabinet, was renamed as the Office for Women and moved to a line department, The Department of Family and Community Services. The programs and functions of the Office were not affected by the move, nor was funding cut from the Office. The government view is that

... it made more sense for the Office's functions to be based in the Department of Family and Community Services. In particular, the service delivery functions, direct work with community organisations, research and policy development roles all sit better in a line department. ... OfW continues to be a central point of advice on the impact of policies on women for the whole of government, and it is expected that departments will continue to consult with and involve OfW on issues that affect women.<sup>7</sup>

390 With respect, we do not share this view. Women's policy in Australia has a broader reach than the remit of the Department of Family and Community Services. There are implications for women in

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<sup>5</sup> Australian Government "Women in Australia: Australia's Combined Fourth and Fifth Reports on Implementing the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women" (2003)

<sup>6</sup> Robin Low, YWCA Australia, "Correspondence between YWCA Australia and the Attorney-General's Office regarding the draft National Action Plan on Human Rights, June 2004" (2004)

<sup>7</sup> Australian Government Office for Women's Policy, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Office for Women, August 2005," (2005).

every line department of the Commonwealth government, not simply those issues which relate to women's roles in families and communities. We are concerned that placing the OfW in the Department for Family and Community Services diminishes the capacity to mainstream gender issues throughout government.

In 2004, the NSW Department for Women was abolished, and replaced with the Office for Women in the Premier's Department. NGOs at the NSW WRC consultation reported that by 2005-2006 the budget will have been scaled back to such an extent that capacity/functioning will drop by 85%.<sup>8</sup>

400 Anecdotal evidence suggests that where women's machineries are not located at the highest possible level of government, their capacity to generate political leadership for their issues is diminished. Moreover, the move contravenes the PFA recommendation that national machineries for the advancement of women be situated at the highest possible level of government.<sup>9</sup> In relation to state/territory machineries for the advancement of women, four are in Premier's departments and four are in line departments.

*CEDAW Committee consideration of the issue*

The Concluding Comments for the 3<sup>rd</sup> Periodic Report noted budget cuts of 38% to the Australian Government Office of the Status of Women.

*We recommend that the CEDAW Committee*

⇒ Affirm that the machineries for women should be located at the highest possible level of government. Federally this means in the Department of Prime Minister and Cabinet

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### ***Failure to ratify the Optional Protocol to CEDAW***

In August 2000, the Australian Government announced that it would not ratify the OP to CEDAW. The government position has not changed in the intervening period. The government report does not address this issue.

*CEDAW Committee consideration of the issue*

Australia has not been reviewed by the Committee since the entry into force of the OP to CEDAW.

*We recommend that the CEDAW Committee*

⇒ Call for the Australian Government to ratify the OP to CEDAW

### 420 ***Lack of constitutional entrenchment of equality***

There is no entrenchment of equality in the Australian Constitution. The government report does not address this issue.

*CEDAW Committee consideration of the issue*

This issue has been addressed in questions of the Committee on the Initial, Second and Third periodic reports. No Concluding Comment specifically addressing this issue has been adopted.

*We recommend that the CEDAW Committee*

⇒ Make a clear recommendation to entrench equality provisions in the Constitution.

⇒

### ***State/Territory Bills of Rights processes***

430 The exclusion of economic, social and cultural rights from the *Human Rights Act 2004* (ACT) is subject to parliamentary review. The Victorian government is currently considering a Bill of Rights, though excludes economic, social and cultural rights from its Statement of Intent and is likely to take a similar approach in terms of a general non-discrimination provision, as per the *Human Rights Act 2004* (ACT). Reference to the realisation of substantive equality has not been incorporated in

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<sup>8</sup> WRANA, "Our Rights, Our Voices: The NSW Community Report on Women," (Melbourne: WRANA, 2004), 7.

<sup>9</sup> United Nations, "Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action," (Beijing: United Nations, 1995), paragraph 201.a.

the Statement of Intent. Implementation of CEDAW is undermined by a failure to ensure legal entrenchment of substantive equality and economic, social and cultural rights in the development of Bills of Rights.

*We recommend that the CEDAW Committee*

440 ⇒ Remind federal/state/territory governments that in developing a Bill of Rights, provisions for the realisation of substantive equality must be incorporated, alongside economic, social and cultural rights

***Discrimination against women in prison***

450 Sisters Inside (Qld),<sup>10</sup> Beyond Bars (NSW)<sup>11</sup> and the Federation of Community Legal Centres (Vic)<sup>12</sup> have lodged submissions to state anti-discrimination bodies alleging sex and race discrimination and discrimination on the basis of cognitive, mental and physical impairments on behalf of women prisoners in Queensland, NSW and Victoria. They present evidence that the key means of sex discrimination are the classifications system; the lack of low security beds; access to conditional and community release; access to programs; access to work and the practice of strip searching. They present evidence that the key means of race discrimination against Indigenous women and women from culturally and linguistically diverse backgrounds are inadequate translation/interpretation services, inappropriate food, and a failure to meet religious needs. They present evidence that women labeled with an intellectual, psychiatric or learning disability are more likely to be classified as maximum-security prisoners.

*We recommend that the CEDAW Committee*

⇒ Call for state and territory governments, and relevant statutory authorities, to examine allegations of discrimination in the prison system and introduce the necessary reforms to eliminate discriminatory practices

460 ***Discrimination against same-sex couples***

Discrimination against same-sex couples occurs in federal, state and territory jurisdictions in Australia. Currently, the greatest area of challenge is in the federal arena where discrimination against same-sex couples and families is maintained and in some cases is being actively pursued in areas of relationship recognition, immigration, superannuation, taxation, social security, workplace entitlements and health care.

470 Before turning to Federal law, it is important to make mention of limitations in state/territory law. While significant and welcome legislative reform has been undertaken in some states and territories, as described below, anomalies remain. For example, in NSW a bi-sexual woman can be fired from her job because of her bi-sexuality. In Queensland, the *Anti-Discrimination Act 1991* (Qld) allows for the lawful dismissal of transgender people working with children.

Legislation on same sex relationships is being considered in South Australia. The legislation is currently in the Upper House. There is a concern that the legislation will not be adopted in this term of parliament. We will provide updated information, and if necessary recommendations, at the CEDAW Session in January 2006.

In 2004, the *Marriage Act 1961* (Cth) was amended to clarify that only marriages between a man and a woman will be recognised in Australia; moreover, as a result of the amendments same-sex marriages solemnised in other countries will not be recognised in Australia.

While same-sex relationships have been recognised in various state/territory jurisdictions, discrimination against same-sex families remain, for example Victoria and Queensland ban same-

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<sup>10</sup> <http://www.sistersinside.com.au/media/adcsqsubmission.pdf>

<sup>11</sup> <http://www.sistersinside.com.au/media/NSWADCreport.pdf>

<sup>12</sup> <http://www.sistersinside.com.au/media/VICComplaint.pdf>

480 sex couples from using artificial reproductive technology or from being able to adopt. In Victoria, the *Infertility Treatment Act 1995* (Vic) restricts access to invitro fertilisation to married and heterosexual de facto couples. Following litigation in 2000 where the Federal Court of Australia found that the Victorian law was inconsistent with provisions of the *Sex Discrimination Act 1984* (Cth) (particularly those making it illegal to discriminate against women on the grounds of their marital status)<sup>13</sup> the Australian Government introduced amendments to the *Sex Discrimination Act 1984* (Cth) to allow States/Territories to decide whether to restrict access to IVF to those who are married or in de facto relationships. The Attorney-General has indicated the following views in relation to this issue

490 While the proposed legislation lapsed when Parliament was prorogued at the last election, the Australian Government does not believe that the *Sex Discrimination Act* was ever intended to prevent the States and Territories legislating to restrict access to assisted reproductive technology services. This position is consistent with the State and Territory governments' responsibilities in the provision of health and medical and treatment under our Constitution. It is also consistent with the Government's view that it is in the best of interests of children that, other things being equal, they have the reasonable expectation of the care and affection of both a mother and a father.<sup>14</sup>

500 It seems reasonable to expect that the amendment will be reintroduced at some point. Moreover, the Australia Coalition for Equality indicates that a ban to access to adoption by same-sex couples is also being considered.<sup>15</sup> Adoption laws are already restrictive, for example in Victoria the *Adoption Act 1984* (Vic) precludes women in same-sex partnerships from adopting their partner's children. When the *Marriage Act 1961* (Cth) was amended in 2004, the Australian Government also proposed to ban same-sex couples from adopting children from overseas. This aspect of the Bill was not passed. However, now that the Government controls both houses of parliament it is likely to be re-introduced. The CROC and the *Family Law Act 1975* (Cth) provide that all decisions in relation to children must be in the "best interests of the child". This necessitates determining the most appropriate care arrangements for children on a case-by-case basis. A blanket ban on inter-country adoptions by same-sex couples is inconsistent with these principles.

510 In the context of access to Medicare and PBS Safety Nets (see article 12 for a full explanation of these programs) same-sex couples and families are discriminated against because their relationships are not recognised in the definitions of a couple and family contained in the *National Health Act 1953* (Cth) or the *Health Insurance Act 1973* (Cth).

Discrimination also manifests in the Australian taxation system, particularly in relation to offsets and deductions that can be claimed against the cost of raising a family or having a dependent. The definition of spouse only includes heterosexual partners. This distinction excludes the recognition of dependents in same-sex relationships (dependents include children, parents of the spouse or an invalid sibling or child). This renders same-sex couples ineligible to claim tax offsets and deductions in this regard. Moreover, the 2004 changes to superannuation did not extend to current or retired employees of the Australian Public Service.

520 Similar issues arise in relation to social security payments (particularly in relation to widow and bereavement payments which are not available for same-sex couples), veteran's benefits and defence force assistance for serving members. In particular, with respect to veterans' benefits, the Human Rights Committee found that the prohibition on same-sex access to veterans' benefits breached the ICCPR provisions on equality before the law.

Finally, while Australian citizens and permanent residents can sponsor their lesbian or gay partner to migrate to Australia or stay in Australia permanently (if they are already legally here), the quotas

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<sup>13</sup> *McBain v State of Victoria 2000*

<sup>14</sup> Australian Government Attorney-General, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Attorney-General, August 2005," (2005).

<sup>15</sup> Australian Coalition for Equality <http://www.coalitionforequality.org.au>

for this category are small and subject to political decision-making. Anecdotal evidence suggests that a large number of applicants are turned away.

*We recommend that the CEDAW Committee*

- 530 ⇒ Express concern that the lapsed amendment to the *Sex Discrimination Act 1984* (Cth) would have breached CEDAW
- ⇒ Encourage state/territory jurisdictions to address exemptions in their anti-discrimination framework and those adoption laws which discriminate against lesbians, gay men, bi-sexual, intersex and transgender people
- ⇒ Encourage the Australian Government to adopt legislation extending the same-sex couple entitlements contained in the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004* (Cth) to the APS superannuation scheme
- 540 ⇒ Express concern at the current levels of discrimination against lesbians, gay men, bi-sexuals, intersex and transgender people in law and policy, particularly in the areas of social security, medical benefits, APS superannuation, veterans' benefits and defence force assistance and encourage appropriate amendments to be introduced

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## Article 4 – Temporary Special Measures

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### Positive Developments

550 In 2002 the Catholic Education Office of the Archdiocese of Sydney (the CEO) applied to the Human Rights and Equal Opportunity Commission (HREOC) for a temporary exemption to the *Sex Discrimination Act 1984* (Cth) to enable them to offer scholarships to male high school students as a means of encouraging them to study primary school teaching. HREOC found that the application would be at odds with the purpose of the *Sex Discrimination Act 1984* (Cth) and CEDAW, and rejected the application. HREOC subsequently negotiated a more equitable arrangement with the CEO, in which an equal number of scholarships were offered to men and women. The process was useful in so much as it highlighted a range of issues to do with gender segregation in the teaching profession and a concomitant inadequate valuing of the profession which manifests in, amongst others, low pay and poor conditions.

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## Article 6 – Suppression of the exploitation of women

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*NB The Australian Government Report incorporates information on people smuggling, trafficking, sexual exploitation of children, sexual servitude, sexual assault and sex work in to this section.*

*Two key issues emerge, which should be considered in developing the Concluding Comments*

- 560 1. *The conflation of people smuggling and trafficking is inappropriate. Theoretically the Australian Government does distinguish between people smuggling and trafficking, although in practice eradication of the two practices has been pursued in a joint agenda. This conflation is unfortunate.*
2. *Sexual assault is not solely experienced by sex workers or in the context of sex work. Sexual assault has generally been considered under the broader rubric of VAW, as per General Recommendation 19. We will consider the issues relating to sexual assault under Article 15.*

### Positive Developments

570 The *Criminal Code Amendment (Trafficking in Persons) Offences Act 2005* (Cth) comprehensively criminalises the practice of trafficking in persons. In particular, the *Support for Victims of People Trafficking Programme* is an important step towards ensuring that the exploitation of trafficked women is not perpetuated by government authorities. OfW reports that the programme “provides financial and other support to victims around Australia who are of interest to the police or assisting

with criminal investigations and prosecutions in Australia. The support provided assists with victims' living expenses and their general well being and includes income support, access to accommodation, medical treatment, basic legal advice, counselling, training and social support."<sup>16</sup>

## **Strengthening the implementation of Article 6**

### ***Room for improvement in the response to trafficked women***

580 While the *Support for Victims of People Trafficking Programme* is an important initiative limitations have been identified in relation to the visa regime for trafficking victims and the communications strategy. It is important to note that trafficking relates not just to sexual exploitation, but also to domestic work and the agricultural sector.

The communications strategy was an integral part of the program, providing for a domestic community awareness strategy. It was scheduled to commence in 2004.

⇒ An Advisory Committee was established, which met for the last time in November 2004

⇒ Consultants were hired to produce the materials

⇒ However, as at September 2005, the communications strategy has yet to be launched

Workers in the field say that their support work is being hampered by the failure to launch the community awareness strategy.

590 The Bridging Visa F, Witness Protection (Trafficking) and Criminal Justice Stay Visa is available to persons who are assisting, or who have assisted with, an investigation or prosecution of offenders and enables them to remain lawfully in Australia. In the view of the Australian Government, the "trafficking visa regime is a balanced one – it provides support to people in genuine need of protection and who are assisting law enforcement agencies with their investigations."<sup>17</sup>

We have two concerns with the regime. At the level of principle, the conflation of protection with investigation is problematic. Protection is only available to women who have the capacity to, or agree to, cooperate with investigations. This approach to our protection obligations means that protection fails if a prosecution fails. Indeed, in their *2005 Trafficking in Persons Report*, the US State Department notes that "the government should consider expanding its protection efforts to cover victims who cooperate with the police but are not part of a viable investigation."

600 Alternatively, Italy has a system where residency permits are "not contingent on the victim collaborating in a prosecution and yet the prosecution rates are reportedly growing with no reported abuses of the system."<sup>18</sup>

Beyond our objection to the principle of a cooperation dependent protection regime, at the implementation level, anecdotal evidence suggests that the regime is not meeting the articulated protection objectives.

⇒ The Bridging Visa F is meant to be a 30-day visa which facilitates initial investigation of the allegations to enable the police to determine whether the individual concerned has useful information and she is able to participate in an investigation

⇒ If this is found to be the case, the police should then apply for a Criminal Justice Stay Visa

610 ⇒ At the conclusion of the prosecution or at the point an investigation ceases it is then possible for the Australian Federal Police (AFP) to support an application for a *Witness Protection (Trafficking) (Temporary)* visa or a *Witness Protection (Trafficking) (Permanent)* visa. These visas are only available to individuals

⇒ who have significantly assisted with a prosecution/investigation

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<sup>16</sup> Australian Government Office for Women's Policy, "Combating People Trafficking: Website [Http://www.ofw.facs.gov.au/International/Combating\\_People\\_Trafficking/Index.Htm](http://www.ofw.facs.gov.au/International/Combating_People_Trafficking/Index.Htm)," (Canberra: OFW, 2005).

<sup>17</sup> Australian Government Office for Women's Policy, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Office for Women, August 2005."

<sup>18</sup> Janet Phillips, "People Trafficking: Australia's Response," (Canberra: Parliamentary Library, 2004).

- ⇒ is not the subject of any related prosecutions
- ⇒ will be in danger if returned to their home country
- ⇒ This regime creates tremendous uncertainty for victims of trafficking, who are unable to ascertain whether they will be offered permanent or even temporary protection if they are able to provide evidence

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In practice, information we have received suggests two deviations. First, women are being deported within a matter of days if the police ascertain that they can not proceed with an investigation. While this meets the requirements of the regulations, it means that women who may need protection are being denied protection because they do not have useful information.

The second issue is that the visa regime means that applications for *Witness Protection (Trafficking) (Temporary)* visa or a *Witness Protection (Trafficking) (Permanent)* visa are contingent on a ministerial certification of contribution and fear of retribution. In addition to the challenges in reaching this point, it appears the police believe that a Criminal Justice Stay visa will enable them to better retain contact with the woman and ensure her testimony, and thus they will reapply for a CJSV rather than apply for the other categories of visas.

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The ramifications of the cooperation dependent protection conundrum are particularly evident when a prosecution fails. If a Bridging Visa F is cancelled, women can apply for a protection visa. However, as most women will have exceeded the 45-day threshold period by this time, they will be issued with either a Bridging Visa A without work rights or a Bridging Visa E. They will also be denied the ongoing support provided through the *Support for Victims of People Trafficking Programme*.

*We recommend that the CEDAW Committee*

- ⇒ Welcome the adoption of the new programs to combat people trafficking
- ⇒ Encourage adequate funding of the Domestic Community Awareness Strategy and its immediate implementation
- ⇒ Urge reconsideration of the cooperation dependent protection framework for the visa regime, including reference to the Italian model which has the virtue of securing prosecutions and offering appropriate levels of protection
- ⇒ Advocate that if the cooperation dependent protection visa regime remains, the Australian Government should
- ⇒ cap the CJSV at 12 months, and then support applications for the *Witness Protection (Trafficking) (Temporary)* visa or a *Witness Protection (Trafficking) (Permanent)* visa
- ⇒ if a Bridging Visa F is going to be cancelled, enable women to receive a Bridging Visa A while their application for protection is processed, and continue access to the *Support for Victims of People Trafficking Programme*

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### ***Decriminalisation of sex work***

The issue of sex work is predominantly addressed at a state/territory level. There are three different approaches within Australia: decriminalisation (NSW), regulation (Tasmania, ACT, NT, Queensland, Victoria), criminalisation (South Australia and WA). Laws covering sex work are found in a range of different places: criminal codes, health regulations, police acts and sex-work-specific legislation. Sex worker organisations argue that the application of these laws can be discriminatory. For example, in WA the *Prostitution Act 2000* (WA) gives police the power to issue a “move-on-notice” which prevents individuals from returning to a specified inner-city area for up to 24 hours. If the individual enters the area and are stopped they may be issued with a restraining order prohibiting them from entering that area for up to one year. If the woman lives in that area

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these rules can prove extremely disruptive.<sup>19</sup> The Scarlet Alliance report that these laws have only been enforced against female sex-workers, not male sex-workers.<sup>20</sup> For the most part, criminalisation of sex work has a disproportionate impact on women sex-workers, and results in women not reporting violence for fear of prosecution. Under the regulatory approach, sex workers in Queensland and Victoria are subject to mandatory sexually transmitted infections tests.

*CEDAW Committee consideration of the issue*

The 1995 Concluding Comments noted the different legal frameworks, and encouraged assessment of “effectiveness of the varying measures in reducing the exploitation of prostitution.”

670 *We recommend that the CEDAW Committee*

⇒ Urge state/territory governments to decriminalise sex work in all jurisdictions

⇒ Recommend to the Victorian and Queensland governments that they repeal mandatory health tests of sex workers

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## Article 7 – public participation

### Positive Developments

680 We welcome the funding of sector specific women’s agencies and the funding of four women’s Secretariats at the Commonwealth level. We note, however, the lack of Secretariats specifically addressing the needs of Indigenous women or women from diverse cultural and linguistic backgrounds.

We welcome the report from the ACT that on ACT Government Boards where the Government has complete control over appointments women have reached 50% representation. On Boards where Ministers do not have complete control over appointments, the figure is 46%. This success has been achieved in part by the strong promotion of register for women interested in being appointed to Government boards, combined with a joint ACT Government-YWCA of Canberra training program for women interested in taking up board appointments.<sup>21</sup>

690 Innovative programs are being developed and supported. The Self-Esteem, Identity, Leadership and Community Participation project, initiated by the Islamic Women’s Welfare Council of Victoria, provides opportunities for Muslim women to develop their self-confidence, well-being and awareness of issues, individual strengths and leadership skills. On completion of the course, participants are encouraged to act as resource persons, mentors and leaders in the community.

*We recommend that the CEDAW Committee*

⇒ Welcome the funding of the four national women’s secretariats and recognise that this funding model could be strengthened through the development of national women’s secretariats specifically representing Indigenous women and women from migrant and refugee backgrounds

### Challenges in implementing Article 7

#### *Participation of Indigenous Women*

700 We are concerned that the mechanisms for Indigenous Women’s public participation are inadequate. In 2004 the Australian Government abolished the Aboriginal and Torres Strait Islander Commission (ATSIC). The demise of ATSIC represents the demise of a democratically elected voice for Indigenous people in the Australian community. ATSIC has been replaced with a range of

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<sup>19</sup> Elaine Dowd, "Sex Workers' Rights, Human Rights: The Impact of Western Australian Legislation on Street Based Sex Workers," *Outskirts* 10 (2002).

<sup>20</sup> Ibid.

<sup>21</sup> WRANA, "Our Rights, Our Voices: The Australian Capital Territory Community Report on Women," (Melbourne: WRANA, 2004), 14.

710 “mainstreaming” mechanisms, including the establishment of an Office of Indigenous Policy Coordination (OIPC) in the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA), the replacement of ATSIC regional offices with Indigenous Coordination Centres. In a 2001 report the Commonwealth Grants Commission concluded that, “while mainstream and Indigenous-specific programmes have often complemented each other, and both have been essential to meeting clear needs: ‘it is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people.’”<sup>22</sup>

We are concerned that information on where women have been re-deployed has not been effectively communicated to women in communities. We are also concerned about the measures taken to promote Indigenous women’s leadership in the wake of ATSIC’s demise. In particular, we are concerned about processes to ensure that women in community are engaged in government leadership programs, in particular in processes adopted by the OIPC.

*CEDAW Committee consideration of the issue*

720 In the concluding comments for the Third Periodic Report at paragraph 404 the Committee encouraged the Government to collect statistical data on the participation of Aboriginal and Torres Straight Islander women in the workforce, in decision making, in politics and administration, and in the judiciary with a view to enhancing programmes that would benefit them. It suggested that the Government might include representatives from these communities when it presented its next report to the Committee.

*We recommend that the CEDAW Committee*

⇒ Urge the Australian Government to take measures to finance and implement policies and action plans to engage Indigenous women’s in the wake of ATSIC’s demise.

***Participation of women with disability***

730 Women with disability at our consultations reported significant access barriers which restrict participation in political and public life. Key barriers include inaccessible voting methods and locations, particularly for women with vision, hearing, intellectual and mobility impairments; and inaccessible women’s leadership, development and mentoring programs. Women with disability also reported that there was also a lack of leadership, development and mentoring programs specifically targeting women with disability.

*We recommend that the CEDAW Committee*

740 ⇒ Call for Federal, State / Territory and local Governments build universal access principles into all aspects of election and voting policy and practice  
⇒ Call on Federal and State / Territory Governments to fund leadership, development and mentoring programs specifically for women with disability and ensure the integration of women with disability in women’s leadership, development and mentoring programs

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## **Article 8 – International Participation**

### **Positive Developments**

AusAID has recently established the Health, Population and Gender section which has responsibility for policy development/information dissemination and monitoring of policy implementation in gender equality.<sup>23</sup>

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<sup>22</sup> <http://www.apf.gov.au/library/pubs/CIB/2004-05/05cib04.htm>

<sup>23</sup> AusAID, "Correspondence between the Women's Rights Action Network Australia and AusAID, August 2005," (2005).

The Australian Government has recently announced an increase in the overseas aid budget, raising it to 0.37% of the Gross National Income (though this still falls short of the UN target of 0.7%).

750 The participation and leadership of the Australian Government at the Beijing Plus Ten Review session, in particular their commitment to a reaffirmation of the *Platform for Action*, was instrumental in ensuring that the PFA was not renegotiated or weakened.

The (then) Office for the Status of Women played a pivotal leadership role in the Ad Hoc Group on Gender Integration (AGGI) in APEC and the development of the APEC Framework for the Integration of Women in APEC.

### **Strengthening the implementation of Article 8**

760 The 1997 policy statement *Gender and Development: Australia's Aid Commitment* provides the rationale and approach of gender integration in the aid program. The Australian Government will table a White Paper on the future directions of Australia's aid engagement in the first quarter of 2006. This paper will provide direction for the medium term. We will provide an update on the content of the White Paper if it is available at the time of the review. The 2004 DAC review welcomes AusAID's "efforts to promote gender throughout its program" but nonetheless notes that "implementation has proved understandably challenging." One useful mechanism which could be pursued is the development of impact assessment tools on gender mainstreaming at AusAID and among its key stakeholders. In relation to the Health, Population and Gender Section there is community concern that issues affecting women with disability are not addressed by either the health or gender priorities of such an initiative.

770 The *Framework for the Integration of Women in APEC* identifies the importance of identifying and understanding the differences in the lives of women and men, and the diversity among women themselves, particularly with respect to trade policies. In 2007, Australia will host APEC, including meetings of the General Focal Point Network and the Women's Leaders Network. While important advances have been made in increasing the participation of women in trade, a gendered analysis of the impact of trade agreements has yet to be adopted. At present, gender analysis of trade agreements is conducted on an ad hoc basis, and subject to departmental interest/capacity. Trade agreements can have significant impacts on the realisation of CEDAW rights, and we encourage the adoption of impact assessment tools on gender and trade, for example, those developed by Women's EDGE.

*We recommend that the CEDAW Committee*

- ⇒ Welcome the recent establishment of the Health, Population and Gender Section of AusAID
- 780 ⇒ Welcome recent increases in the Australian aid budget (though we note it still falls below the international objective of 0.7% ODA/GNI ration, which Australia has endorsed).
- ⇒ Welcome the work of Australia in AGGI at APEC
- ⇒ Propose that gender issues could better be addressed in trade and aid policies by the adoption of impact assessment tools.

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## **Article 9 - Nationality**

### **Positive Developments**

790 The Australian Government has recently announced a series of significant changes to the policy of detaining refugee applicants who arrive in Australia without a valid visa. This policy had led to the detention of a number of men, women and children, for indefinite periods of time. Important changes include

- ⇒ an amendment of the *Migration Act 1958* (Cth) to state that as a principle a minor child shall only be detained as a measure of last resort

- ⇒ the release of children and their families into the community without security supervision and with reporting arrangements
- ⇒ an increased role for the Ombudsman in reviewing cases of those in detention
- ⇒ the introduction of a three-month time limit to processing asylum claims in the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) primary stage and at the Refugee Review Tribunal
- ⇒ amendments to the Temporary Protection Visa (TPV) regime, which will see applications fast tracked. Based on current projections, 90% of applications could be approved. An update on this will be provided in January 2006.<sup>24</sup>

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*We recommend that the CEDAW Committee*

- ⇒ Welcome the changes that the Australian Government has adopted in relation to the detention of children and their families
- ⇒ Welcome the changes made to the processing and accountability system, as well as changes to the TPV regime which will see applications processed faster
- ⇒ Welcome the role of the Ombudsman in reviewing cases of those in detention, but assert to the Australian Government that judicial review would be preferred

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## **Challenges in implementation of Article 925**

### ***Women on Bridging Visa E***

A Bridging Visa E is, *inter alia*, granted to those people who arrive in Australia in a lawful manner but do not lodge an application for protection within the 45-day period established in law by the Australian Government as a reasonable timeframe to invoke Australia's protection obligations. A Bridging Visa E means that the holder has no

- ⇒ authority to work
- ⇒ no access to social security
- ⇒ no access to Medicare
- ⇒ no access to state-supported housing
- ⇒ Access to education is dependent on state/territory government policy

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The Australian Government funds the Australian Red Cross to provide the Asylum Seekers Assistance Scheme, which provides eligible asylum seekers with casework and an allowance of up to 89% of Centrelink's Special Benefit. The Hotham Mission report that in a study of 203 asylum seekers none had access to the ASAS payments.<sup>26</sup> Agencies have been established to provide material aid and assistance to holders of Bridging Visa E. These agencies report a range of issues, including that

- ⇒ Women are denied access to pre-natal care in the public health system; because of the prohibition on their right to work and social security rights they are unable to pay for private health care. For example, women who are seven-months pregnant have presented at one agency having never received pre-natal care<sup>27</sup>
- ⇒ Women and their children rely on food banks at agencies to feed themselves

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<sup>24</sup> Ecumenical Migration Centre, "Briefing on Changes to Detention and Temporary Protection Visas Announced by the Prime Minister on 17th June 2005, <http://www.ajustaustralia.com/resource.php?act=attache&id=81>," (Melbourne: EMC, 2005).

<sup>25</sup> With thanks to Pasanna Mutha, Asylum Seeker Project - Hotham Mission and Shelley Burchfield, Refugee and Immigration Case Law Service for information on the relevant laws and issues.

<sup>26</sup> Asylum Seeker Project - Hotham Mission, "Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E," (Melbourne: ASP - Hotham Mission, 2003).

<sup>27</sup> Ibid.

⇒ Women and their children rely on clothing donations to agencies to clothe themselves The changes announced by the Australian Government do not apply to holders of Bridging Visa E

*We recommend that the CEDAW Committee*

⇒ Express concern at the CEDAW breaches occasioned by the Bridging Visa E regime, including failure to provide access to reproductive health services, housing, food and clothing

840 ⇒ Call for the Australian Government to rescind Bridging Visa E

### ***Women on Temporary Protection Visas***

A Temporary Protection Visa (TPVs) is granted to those people who have a valid claim for refugee status but arrive in Australia in an unauthorised manner. The TPV is issued for three years. At the end of that period, they may apply for permanent protection, and if they are assessed to still have a valid claim for a refugee status are given Permanent Residency. Holders of a TPV's have work rights, full access to Medicare and special benefits. However, they have no family reunion rights and if they leave the country they can not return. Women, including mothers, who arrive without their families are thus separated for their families for a minimum of three years.

850 *We recommend that the CEDAW Committee*

⇒ Assert to the Australian Government that the TPV regime in its current format does not meet Australia's CEDAW obligations in relation to women and maternity

⇒ Welcome recent amendments to the TPV regime, but call for the TPV to be rescinded

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

A number of women in partnerships are not the primary applicant. This can have a detrimental impact on women who subsequently experience domestic violence and seek to separate from their partner's application and lodge an individual application. While the *Migration Act 1958* (Cth) provides that women who have applied for a spousal visa or business visa may be considered individually if they can prove domestic violence, the same provision is not made for women who have invoked Australia's protection obligations.

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Section 48.b of the *Migration Act 1958* (Cth) provides the exception to the rule, and provides the Minister for Immigration with a non-compellable discretion to allow an asylum seeker to make a second protection visa application if there is credible new information to strengthen their refugee case. Representatives of women who have experienced domestic violence argue that these women now fall into the category of a particular social group (ie, the social group of women who have experienced domestic violence and the social group of single women) and have a well founded fear of persecution if they are returned to their country of origin. In 2001 the Australian Parliament adopted the *Migration Legislation Amendment Act (No.6) 2001* (Cth) which limits the definition of persecution to be used in determining refugee status. The amendment was largely in response to successful court cases which had found that women survivors of domestic violence constituted a particular social group and suffered a well-founded fear of persecution. Refugee lawyers expressed concern at the time that women survivors of domestic violence would be detrimentally impacted by this amendment. Anecdotal evidence suggests that this has been the case, and very few applications under s48.b are successful. Unsuccessful applicants are able to appeal their case to the Refugee Review Tribunal. Research conducted prior to the passage of *Migration Legislation Amendment Act (No.6) 2001* (Cth) pointed to the difficulties of obtaining protection for survivors of domestic violence, and the difficulty has only increased in the intervening period. The *Migration Legislation Amendment Act (No.6) 2001* (Cth) has effectively undermined the 1996 *Guidelines on Gender Issues for Decision Makers*.

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One final avenue is then open to unsuccessful applicants; to apply under s.417 of the *Migration Act 1958* (Cth). This section empowers the Minister to exercise her non-compellable discretion to grant permanent residency on humanitarian and public interest grounds. Evidence suggests that domestic

violence and gender based violence is rarely considered to be of such a compelling humanitarian nature or of public interest to warrant the exercise of the Minister's discretion in favour of women.

A significant limitation to both the s.48.b and s.417 application processes is that applicants must move to a Bridging Visa E and will often lose their work rights and social security entitlements they initially have had (see above for discussion of this impact). For survivors of domestic violence this also removes access to domestic violence counselling services, compounding their victimisation.

890 As a consequent of these legal limitations, women are staying in violent relationships. Given the leadership the Australian Government has shown on the issue of domestic violence, the maintenance of these discriminatory provisions seems to be an anomaly.

*We recommend that the CEDAW Committee*

⇒ Express concern that the *Migration Legislation Amendment Act (No.6) 2001* (Cth) has undermined the 1996 Guidelines on Gender Issues for Decision Makers

⇒ Urge the government to adopt a broader approach to the issue of gender-based violence when interpreting the Refugee Convention, in particular when considering s.48.b applications

⇒ Recommend that the government amend the *Migration Act 1958* (Cth) to enable women invoking our protection obligations to be considered individually in situations of domestic violence, as per the provisions for the partner migration process

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⇒ Recommend that if this approach is not taken, that the Ministerial Guidelines which guide decision making under s.417 incorporate a broader approach to the issue of gender-based violence

⇒ Call for survivors of domestic violence who lodge applications under s.48.b or s.417 to be granted a Bridging Visa A

### ***Women in Immigration Detention Centres***

A broad range of women are detained in Immigration Detention Centres (IDCs), including those

⇒ detained under Australia's mandatory detention of unauthorised arrival asylum-seeker policy

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⇒ detained as a result of DIMIA compliance actions in relation to their visas, including those who have overstayed their visas

The latter form the majority of detainees in IDCs in Australia. The Women's Electoral Lobby have identified that women in detention

... face similar issues to the men, but women may face others, such as assumptions about gender appropriate behaviours, prejudices, specific needs relating to contraception, reproduction, mothering, healthcare and possible harassment and violence.<sup>28</sup>

*We recommend that the CEDAW Committee*

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⇒ Call for an expansion of the *Immigration Detention Standards* to incorporate gender-based issues:

⇒ Clear guidelines on privacy and access to female guards and other female workers in the facilities at all times

⇒ Clothing needs and particular modesty requirements as part of routine provisions; on offer and not requiring special consideration

⇒ Direct access and referral to specialist and general medical practitioners and other paraprofessionals

⇒ Facilities that allow mothers the privacy and the capacity to fulfill family needs like preparing food and providing care, if that is their wish

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<sup>28</sup> Eva Cox and Terry Priest, "Women in Immigration Detention: More Questions Than Answers," (Sydney: Women's Electoral Lobby Australia, 2005), 2.

- 930 ⇒ The development of procedures and protocols, in consultation with experts, so that women have access to the following:
- Gynaecological services and options for fertility control that meet individual needs and where required are culturally acceptable
  - Antenatal care including options on birthing and privacy
  - Postnatal care and support that does not assume that mothers possess some natural care abilities but assesses what support may be needed
  - Parenting support and care services that recognise the child's and mothers needs
- ⇒ Termination of pregnancy available, if requested, and with full access to counselling to ensure informed choice
- 940 ⇒ Training for both staff and detainees covering domestic violence, sexual harassment and assault and also addressing gender and cultural issues
- ⇒ Clear and understood procedures for making a complaint with timely and appropriate follow up and support
- ⇒ Access to appropriately trained interpreters and translators on request, in particular for healthcare and legal advice. Family members should not be used in this capacity<sup>29</sup>

## **Article 10 - Education**

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### ***Positive Developments***

950 Female tertiary students have been well supported by student organisations, which have increased women's opportunity as well as supported women approaching tertiary education. Among other services, the University of Canberra's Kirinari, which receives significant financial and in-kind support from the Students' Association, provides flexibility and support the unique childcare needs of student parents. By offering flexibility in booking times, Kirinari, and other not for profit, student organisation supported childcare services around the country provide an essential service to women on university campuses.

The Deakin University Student Association has commenced a project to increase the access, participation, success and retention of incarcerated students enrolled at, or wanting to enrol at, Deakin University in Victoria. The project has considered barriers to accessing education for people in custody, and recommendations for the University to improve administrative flexibility in areas such as web based teaching, payment of General Service Fees and access to University staff. The study identified women in non-traditional areas of study and doing postgraduate study by research as a target group for this program.

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Student organisations also support female tertiary students by advocating for a campus free of harassment, sexism and discrimination, thus easing the way for women to achieve at the highest level of education, as well as providing a supportive environment for women to speak up as representatives of the student body.

To better support young parents and young pregnant students, new programs such as the Young Carers and Parents Program at Canberra College are being established.<sup>30</sup>

### 970 **Challenges to the implementation of Article 10**

#### ***Access to higher education***

Fees for higher education were introduced in 1988, establishing a system where students could either elect to pay their fees "up-front" or defer them, and have repayments taken out through the taxation system once their income reached a pre-determined level. In 2003, the government

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<sup>29</sup> Ibid., 3-4.

<sup>30</sup> Ibid.

introduced the *Higher Education Support Act 2003* (Cth) which allowed universities to increase their fees by 25%, an offer taken up in most cases. With many women likely to have a break in continuous employment to have children, HECS debts can be a particularly heavy burden. At present, 93% of men will have paid their HECS debt by the age of 65, in comparison to 77% of women.

- 980 The government has recently introduced the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* (Cth), which will limit essential services on campus, such as affordable, flexible childcare, employment, welfare services, accommodation and counselling. Women at our consultations were concerned that these changes would mean that childcare was not sufficiently flexible for students, that it would be unable to take into account the additional demands of exam time, or the free time that semester breaks provide. Moreover, reduced support for childcare and further privatisation of childcare is likely to further increase costs of higher education. Women at the consultations reported that the cost of childcare has pushed some women out of study, and into the casual and often unskilled job market, undermining their long-term financial stability. For these reasons, the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Bill 2005* (Cth) will have a disproportionate impact on women, and will reduce their access to higher education. We will provide an update on these proposals in January 2006.

*We recommend that the CEDAW Committee*

⇒ Propose that the Australian Government should address the gender-differentiated impact of HECS

⇒ Propose that university's should either be allowed to levy a general services fee to provide student services or should be allowed to fund those services out of general revenue.

### ***Indigenous women and education***

- 1000 Indigenous women continue to face the barrier of unacceptably poor educational opportunities and outcomes. Educational outcomes for Indigenous children continue to be woefully inadequate. Truancy rates for Indigenous children are unacceptably high. Fewer Indigenous children complete school in comparison with other groups in Australia. Less than 10% of Indigenous women have post-secondary qualifications - the lowest of any group.<sup>31</sup> Community consultations showed that there were major concerns with the compulsion for Indigenous children to attend mainstream schools, where traditional languages, customs, values and codes of behaviour are usually ignored. Often the teaching styles and cultural assumptions upon which the curricula are based are inconsistent with Indigenous cultural background. Many Indigenous women experience mainstream education as a taking away of their and their children's Aboriginality.<sup>32</sup>

- 1010 Educational opportunities for young Indigenous women are compromised by a lack of child care facilities and the cost of child care, meaning that many young Indigenous women are unable to either finish high school or continue on to post-secondary studies. Some individual high schools have developed programmes to assist young mums, such as Wanganui High School in Shepparton Victoria, and Balga Senior High School in Perth, Western Australia.

*We recommend that the CEDAW Committee*

⇒ Advise that the Australian Government support and fund culturally and linguistically appropriate education programmes in schools. This must include appropriate and proper training for teachers

- 1020 ⇒ Encourage support and funding for community programmes to assist young Indigenous mothers to continue at school

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<sup>31</sup> Australian Bureau of Statistics, 1998, table 108.

<sup>32</sup> WRANA, *Our Rights Our Voices: The WA Community Report on Women* (WRANA, 2004), p.21

## Positive Developments

### ***Maternity Leave***

1030 In 2004, the Australian Government introduced a universal Maternity Payment. The Maternity Payment was introduced in recognition of the “extra costs incurred at the time of a new birth or adoption of a baby.”<sup>33</sup> The one-off payment of just over AUD3000 per child is paid, for the most part, as a lump sum. There are certain situations in which six equal installments are paid, for example, if the mother is under 16 years of age, if she has an intellectual disability, a substance addiction, a mental illness, a gambling problem is homeless or at risk of being homeless. As we understand it, there are no plans to lift the reservation on paid maternity leave as a result of the Maternity Payment.

*CEDAW Committee consideration of the issue*

The CEDAW Committee noted their concern at the reservation on paid maternity leave.

*We recommend that the Committee*

⇒ Express their view on whether the Australian Government could remove its reservation on maternity leave in light of the Maternity Payment

## Challenges to the implementation of Article 11

### ***Indigenous women’s employment opportunities***

1040 It is important to highlight the complex intersection between employment issues such as casualisation of many jobs in female dominated areas; increasingly unreasonable hours; the difficulty in managing the work/life balance; lack of education and training opportunities; and Indigenous women’s experience of racism in every facet of their lives. Indigenous women often lack opportunities to break into paid employment, and face discrimination by employers when they do enter the paid work force.<sup>34</sup> Major factors in Indigenous women’s unemployment include: overt racism and racial stereotyping; the lack of appropriate and accessible education and training; and geographical remoteness for women in some communities.

1050 In New South Wales, the workforce participation rate for Indigenous women is lower than that of women in general and Indigenous men. There is a low concentration of Indigenous women employed in the private sector, with most being employed in the government and community sectors. Even within the public sector, they are over-represented in lower-paid and temporary positions.<sup>35</sup>

*We recommend that the CEDAW Committee*

⇒ Urge the Australian Government to commit to employment and training programs which provide real opportunities for Indigenous women, rather than current Work for the Dole programs which do not translate into genuine jobs

### ***Changes to the industrial relations system***

1060 Under the current government, Australia has moved from a centralised collective bargaining system to individualised bargaining in the workplace. The first major set of changes were contained in the *Workplace Relations Act 1996* (Cth) and reviewed by the CEDAW Committee in 1997. The CEDAW Committee expressed concern that the changes would have a detrimental impact on women. A second set of major changes have been proposed in 2005. They include dismantling the

<sup>33</sup> Australian Government Family Assistance Office, "Maternity Payment: Website, [Http://www.familyassist.gov.au/Internet/Fao/Fao1.Nsf/Content/Payments-Maternity\\_Payment](http://www.familyassist.gov.au/Internet/Fao/Fao1.Nsf/Content/Payments-Maternity_Payment)," (2005).

<sup>34</sup> WRANA, *Our Rights, Our Voices: The WA Community Report on Women* (WRANA, 2004), p.24

<sup>35</sup> WRANA, *Our rights, Our Voices: The NSW Community Report on Women's Human Rights in Australia* (WRANA, December 2004), p.18

award “safety net” and reducing to five the minimum conditions for employment (the new minimum standards will be a minimum hourly rate of pay (currently \$12.75), 8 days sick leave, 4 weeks annual leave, unpaid parental leave and a maximum number of weekly working hours), structural changes to the way minimum wages are set, and an increased preference for *Australian Workplace Agreements* (the individual contract system introduced in 1996).

1070 The Australian Government argues that “agreement making at the workplace level is particularly well suited to tailoring working conditions and arrangements in ways that assist employees balance their work and family responsibilities.” They have stated that “once the reforms are implemented, the Government will undertake a comprehensive evaluation of the reforms” and that gender issues will be included in that process.<sup>36</sup> With respect, it would be more in keeping with CEDAW obligations if a gender-based analysis was conducted before the legislation was adopted, in order to ensure that unintended adverse impacts on women are avoided.

1080 In response to the proposed changes, the *What Women Want Project*, coordinated by the National Foundation for Australian Women with participation from WomenSpeak, Security 4 Women and the Australian Women’s Coalition (three of the four federally-funded secretariats), identified the disproportionate and detrimental impact on women of the proposed changes. For example, women are more likely to be employed under awards<sup>37</sup> (60% of award dependent workers are women though women only make up 45% of the workforce) and will therefore be disproportionately affected by the reduction of award conditions, the introduction of five minimum conditions for employment, and the increased reliance on AWAs. Women on AWAs earn 60% of the male earnings, in comparison to 83% of male earnings under award conditions; moreover, one academic study found that only 7% of AWAs contained any work-family measures. Women with disability and women from Non-English Speaking Backgrounds (NESB) are also likely to be disproportionately affected by the requirement to negotiate their individual workplace agreement, given the additional structural barriers they face. The proposal to replace the Australian Industrial Relations Commission with a reduced-mandate Fair Pay Commission will leave women without access to the test case facility of the IRC which, through test cases such as the Family Leave Case and the Equal Pay Case, have helped reduce the gender pay gap.<sup>38</sup>

1090 *CEDAW Committee consideration of the issue*

As identified, the CEDAW Committee expressed its concern in relation to the 1996 round of changes in the 3<sup>rd</sup> Periodic Report Concluding Comments. The Committee recommended

1100 that an evaluation should be conducted of the Workplace Relations Act of 1996, assessing its impact upon women of different age groups, with different educational levels and in different occupational groups. The Government should assess whether the Act leads to increased or decreased part-time and casual work, and its impact on women workers’ benefits and on workers with family responsibilities, particularly women’s ability to obtain maternity leave. A similar evaluation and assessment was recommended for Australia’s new childcare benefit scheme.

The Australian Government 4<sup>th</sup> and 5<sup>th</sup> Periodic Report does not provide information on such an analysis, and to the best of our knowledge, such an analysis was not conducted.

*We recommend that the CEDAW Committee*

⇒ Encourage the Australian Government to commit to a “no disadvantage” principle in implementing planned industrial relations changes

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<sup>36</sup> Australian Government Minister for Employment and Workplace Relations, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Minister for Employment and Workplace Relations, August 2005," (2005).

<sup>37</sup> Australia had a unique industrial environment, where wages and conditions of work were set through a series of collectively bargained, independently arbitrated awards.

<sup>38</sup> National Foundation for Australian Women, "Key Points," [Http://www.Security4women.com/www\\_keypoints\\_180905.pdf](http://www.Security4women.com/www_keypoints_180905.pdf), (2005).

- ⇒ Call for a gender-based analysis of industrial relations changes before they are introduced, including an analysis of the impact of changes on women with disability, Indigenous women, women from NESB and sole parents
- 1110 ⇒ Support recommendations of the federally-funded women's secretariats in relation to these changes

***Casualisation and Superannuation***

Every state/territory report highlighted the impact of increasing levels of casualisation for women workers. While casual work is often lauded as a means for enabling women to combine parenthood and work responsibilities (although the same argument is seldom made for men) it also brings reduced conditions (ie, lack of annual/sick leave, which can be particularly difficult for women with parental responsibilities). Women's child-rearing responsibilities also mean that women are in the workforce for a reduced period of time, thus accruing a smaller amount of superannuation. One means of overcoming this would be to introduce a government-funded superannuation contribution for stay-at-home parents.

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Superannuation is available to fully retired workers over the age of 60 years (if born after July 1960) or over the age of 55 years (if born before July 1960). The average life expectancy for Indigenous women is 62.8 years (compared to 82.4 years for non-Indigenous women).<sup>39</sup> Clearly, superannuation as it is currently structured does not provide a practical benefit for most Indigenous women.

In any event, superannuation sufficient for retirement depends upon long, unbroken periods of work remunerated at above the average wage. This is not a system that will assist most Indigenous women in their retirement, particularly given that many Indigenous women undertake unpaid roles as carers for children, relatives with disabilities, and elderly relatives. They also play central roles in their communities by volunteering at a great variety of community based agencies and services. This unpaid work is essential to the continued functioning of many communities, but is rarely acknowledged.

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*We recommend that the CEDAW Committee*

- ⇒ Call for investigation of the possibility of a government-financed scheme to pay superannuation to stay-at-home parents
- ⇒ Urge the Australian Government to give consideration to special measures in relation to Superannuation that should parallel the life expectancy of Indigenous women

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**Article 12 - Health**

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**Positive Developments**

***Incorporation of women's health indicators in the Public Health Outcomes Funding Agreements***

A significant achievement in 2005 was the maintenance/incorporation of women-specific indicators in the Public Health Outcomes Funding Agreements (PHOFAs) negotiated between the Federal and State/Territory governments. Advocates for women's health successfully lobbied for the inclusion of indicators on inequities and risk factors (including gender-specific tobacco and alcohol programs, nutrition and sexual and reproductive health programs), alternative birthing, and FGM education and prevention. The incorporation of these indicators into the PHOFAs is essential to the maintenance of stand-alone women's health services. Australian Government leadership and the response of State/Territory Governments was key to this success.

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<sup>39</sup> Australian Bureau of Statistic, *Deaths Australia 2001*, (2002).

*We recommend that the CEDAW Committee*

⇒ Welcome the maintenance/incorporation of women-specific indicators in the PHOFAs and the continued funding of stand-alone women's health services

### ***Reproductive health***

1160 Abortion law reform in the last 10 years has strengthened women's right to access safe and legal abortions in Western Australia (1998) and Tasmania (2001). In 2002 the Australian Capital Territory removed all references to abortion from its Criminal Code. Emergency contraception, or the "morning after" pill, was recently made available for over-the-counter, non-prescription purchase, for women and girls over the age of 14, increasing its availability as an emergency contraceptive. See recommendation in relation to reproductive health in "challenges in implementing Article 12".

### **Challenges in implementing Article 12**

Australia is ranked 14<sup>th</sup> for public expenditure on health in a listing of OECD members.<sup>40</sup> Despite the existence of a broad range of policies and programs in the area of women's health, there are limitations which need to be addressed if women's right to substantive equality in health is to be realised.

### ***Reproductive Health***

- 1170
- The ACT is the only state to have fully decriminalised abortion
  - All other states contain provisions on abortion in their criminal law (in four jurisdictions laws are still based on the UK *Offences Against the Person Act 1861*)
  - SA, the NT, WA and Tasmania have legislation which prescribes conditions for abortion, which must be met for an abortion to be considered legal. In all circumstances, conditions relate to perceived risk to the woman
  - Victoria, NSW and Queensland rely on common law interpretations of the criminal law to make abortion available

1180 In five jurisdictions, abortions are commonly available up to 20 weeks (Qld, NSW, Victoria, SA, WA). In Tasmania and the NT abortions are commonly available up to 14 weeks. In the ACT there are no legislative restrictions on access to abortions.

Abortions after the time frames specified above are increasingly subject to a strict and cumbersome set of procedures. For example, in WA after 20 weeks of pregnancy, two medical practitioners from a panel of six appointed by the Minister have to agree that the mother or unborn child has a severe medical condition. These abortions can only be performed at a facility approved by the Minister.<sup>41</sup>

In 2005, the Director of Public Prosecutions in NSW initiated legal action against a doctor for performing what it has been claimed is an unlawful abortion. This is the first prosecution since 1973.

Access to abortion is limited by financial constraints, age and place of residence:

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- Medicare provides funding for termination of pregnancy, although Children by Choice note that the Medicare rebate does not cover the full costs of service provision. As such, many women must pay between \$160 to \$600 for a first trimester abortion. This does not constitute equal access to TOP as asserted by the government
  - Young women face additional barriers to accessing abortion, particularly if they are under 16
  - Place of residence has a tremendous impact on access to abortion. For example:

<sup>40</sup> Organisation for Economic Co-operation and Development, "OECD Factbook 2005: Public Policies - Public Expenditure and Aid - Health Expenditure, [Http://Oecd.P4.Siteinternet.Com/Publications/Doifiles/302005041p1g088.Xls](http://Oecd.P4.Siteinternet.Com/Publications/Doifiles/302005041p1g088.Xls)," (2005).

<sup>41</sup> Children by Choice, "Website: Australian Abortion Law and Practice, [Http://Www.Childrenbychoice.Org.Au/Nwww/Auslawprac.Htm](http://Www.Childrenbychoice.Org.Au/Nwww/Auslawprac.Htm)," (2005).

- In Queensland, abortions are only available in private clinics
  - In all other states/territories, abortions are available in private clinics and to a limited degree in public hospitals (though these lists are often quite small and the demand outstrips the supply)
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- For the most part, private clinics are located in capital cities
  - In Tasmania, while abortions are available in the public health system, women must travel to Hobart to obtain an abortion in a private clinic, and women reported that travelling to Melbourne is a common option
  - Abortions are only available in Darwin and Alice Springs in the Northern Territory
  - Access to abortion in rural and regional WA is severely constrained

In early 2005 members of the Australian Government (including the Minister for Health) made comments in relation to removing Medicare payments for terminations. In October 2005 two backbenchers from the Coalition Parties renewed calls for RU486 to be made available in Australia.

1210 *CEDAW Committee consideration of the issue*

The issue of abortion was considered in the initial report and the second periodic report. Questions concerned access for young women to abortion, harmonisation of family-planning, contraception and abortion policies, and dissemination of information on family planning and abortion facilities.

*We recommend that the CEDAW Committee*

- ⇒ Advise state/territory governments that abortion should be decriminalised in all jurisdictions.
- ⇒ Call for increase Australian Government funding for termination of pregnancy (TOP), to address the growing gap between the Medicare Rebate and the cost of service provision
- ⇒ Recommend that the Australian and state/territory governments should examine schemes to address the barriers to access of sexual health services and education faced by women in rural, regional and remote areas

1220

- ⇒ Recommend that the Australian Government should positively consider lifting the ban on the importation of RU 486 and take positive steps to support its importation and sale in Australia

***Funding for medical services***

Women at our consultations reported increased costs associated with access to health care during the reporting period. While not discussed in the Fourth and Fifth Periodic Report, Australia has a system of universal health insurance, first introduced in 1972 and relaunched in 1984 as Medicare. The government, through the Medicare Benefits Schedule (MBS), sets what it considers to be reasonable fees for services patients receive both in hospitals and out of hospitals. Patients in the public hospital system are entitled to free treatment, though waiting lists for many operations have increased in recent years.

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During the reporting period

- General Practitioner (GP) “bulk-billing” (the practice of doctors to charge only the Medicare Rebate for their services) declined from just over 80% of GPs bulk-billing in 1996, to just over 66% in 2003
- The bulk-billing figures have improved recently, currently sitting at around 74%.<sup>42</sup> Nonetheless, the 1996 level has not been regained

What this means in real terms is that there is reduced and uneven access to GP services. For example:

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- the ACT has the lowest bulk billing rate of any state/territory<sup>43</sup>

<sup>42</sup> Australian Medical Association, "GP Bulk Billing Rate, December 1996 to March 2005, [http://www.ama.com.au/web.nsf/doc/ween-6cc88v/\\$File/Bulk\\_Billing\\_Graph\\_Web\\_Update\\_Mar\\_05\\_-\\_No\\_Prac\\_Nurse-Figur..Pdf](http://www.ama.com.au/web.nsf/doc/ween-6cc88v/$File/Bulk_Billing_Graph_Web_Update_Mar_05_-_No_Prac_Nurse-Figur..Pdf)," (2005).

<sup>43</sup> WRANA, "Our Rights, Our Voices: The Australian Capital Territory Community Report on Women."

- The Victorian Council of Social Services notes that “there is a marked difference between rural, regional and inner and outer metropolitan rates of bulk billing. In many rural and regional communities there is no access to general practitioners who bulk bill. Access to GPs who bulk bill is also limited in many outer metropolitan areas”<sup>44</sup>

Patients can consult private doctors and be treated in private hospitals. However:

- doctors in the private sector are not limited to charging the Schedule Fee, and many charge approximately double the Schedule Fee<sup>45</sup>
- 1250 • Medicare will pay a rebate of 75% of the Schedule fee for in-patient services in private hospitals and 85% of the Schedule fee for outpatient services
- In response to the drop in bulk-billing rates among GPs in January 2005 the Australian Government increased the rebate for a standard GP consultation to 100% of the Schedule Fee

Nonetheless, many GPs still charge above the rebate level. Moreover, beyond the gap between the Medicare Rebate and the fee charged, there are “out-of-pocket” expenses incurred when seeking medical treatment, for example, women with disability report that transport and carer costs inhibit their ability to seek treatment.

- 1260 A partial policy response to the growing gaps between Schedule Fees and doctors charges was the introduction of the Medicare Safety Net in 2004. The Safety Net is designed to meet a percentage of “out of pocket” expenses if an individual/family has medical expenses which exceed a scaled threshold in any one year. For example, in 2005 Commonwealth Concession Card Holders will have 80% of their “out of pocket” costs met once they spend over \$306.90. A general rate of \$716.10 has been established. In September 2004, amendments were introduced to enable women to claim gap payments for pregnancy.<sup>46</sup>

The other major strategy adopted by the Australian Government to address these “out-of-pocket” expenses is to encourage participation in private health insurance schemes. Since January 1999, all Australians who had private health insurance have been eligible to claim a 30% rebate from the government.

- 1270 Women are disproportionately impacted by the increased costs associated with health care. In particular, women with disability, women and their children in areas of high socioeconomic disadvantage and in RRR Australia reported reduced access to the health system. For example, four-fifths of sole parents qualify for the low-income concession card.<sup>47</sup> Women are 83.3% of sole parents in Australia.<sup>48</sup> While the government has introduced incentives to bulk-bill concession card holders, there is no requirement to do so, and as such, women in our consultations reported higher costs associated with accessing GP care. In the view of women we consulted public funds would be better spent improving the public health system, rather than subsidising the private health sector.

*CEDAW Committee consideration of the issue*

- 1280 The Committee have not specifically addressed Medicare in previous Concluding Comments or Constructive Dialogue sessions, though in the CC to the Third Periodic Report they noted that “the changing role of government in terms of public expenditure and the ongoing decentralization of responsibility in a number of areas, including health, from the federal to territorial or state

<sup>44</sup> Dean Griggs and Carolyn Atkins, "The Bulk Billing Crisis: A Victorian Perspective," (Melbourne: VCOSS, 2004).

<sup>45</sup> Personal communication with Michelle Gyribaitis, AMA. The AMA maintain that such discrepancies are due to inadequate funding provided to the MBS and fees charged by doctors are necessary to cover the costs associated with running a medical practice, including increased medical indemnity insurance fees.

<sup>46</sup> Australian Medical Association, "Extension of Australia's Medicare Safety Net Will Ease the Financial Burden on Pregnant Women, [Http://www.news-medical.net/?id=4442](http://www.news-medical.net/?id=4442)," (2004).

<sup>47</sup> Ann Harding et al., "Distributional Impact of Government Outlays on the Australian Pharmaceutical Benefits Scheme in 2001-02," *The Economic Record* 283-296 (2004).

<sup>48</sup> National Foundation for Australian Women, "Key Points, [Http://www.security4women.com/www\\_keypoints\\_180905.pdf](http://www.security4women.com/www_keypoints_180905.pdf)."

Governments, had had an impact on the legal and practical implementation of the Convention.” The Committee also recommended that data on the impact of these changes should be collected.

*We recommend that the CEDAW Committee*

⇒ Acknowledge that Australia’s system of universal health insurance is integral to supporting women’s realisation of their substantive right to access health care. Call for ongoing political and fiscal commitment to Medicare as the primary health response to the Australian population

1290 ***PBS and US-Australia FTA***

The Pharmaceutical Benefits Scheme (PBS) provides subsidised medicines to people in Australia. The PBS is the third pillar of the current government approach to health care in Australia (the other two being Medicare and the Private Health Insurance Rebate scheme discussed above). The government, on advice of the Pharmaceutical Benefits Advisory Committee, agrees that a particular drug should be included in the PBS. Through a complex socio-economic and health analysis the Pharmaceutical Benefits Pricing Authority determines what it considers to be a fair (though not necessarily the lowest) price for the drug. The Department of Health and Aging then uses its monopoly power to negotiate with the manufacturer to achieve this price.

1300 In 2005 the US-Australia Free Trade Agreement came into effect. Under this agreement significant changes to the PBS have been approved. Leading academics investigating the agreement argue that “the PBS, as a system of effective bargaining with multinational pharmaceutical firms, has been deeply compromised and higher drug prices can be expected over time. The intellectual property chapter strengthens the position of patent owners and undermines the evolution of a competitive generics industry.”<sup>49</sup> In particular, a review process for decisions of the Pharmaceutical Benefits Advisory Committee creates an opportunity to delay the decision-making process by enabling pharmaceutical companies to challenge the decision to list a drug on the PBS. The FTA also opens the PBS to the threat of trade litigation and is likely to delay the entry of generic drugs onto the Australian market by 24 months, increasing the costs associated with accessing treatments. The FTA also established a joint committee between the US and Australia (the Medicines Working Group) to consider future changes to the health policy of either country.

1310 A gender analysis of PBS data shows that women are larger users of the PBS than men, particularly in their reproductive years. Changes to the PBS will have a disproportionate impact on women.

*We recommend that the CEDAW Committee*

⇒ Call for the government to incorporate a gendered/social impact assessment tool into the work of the Medicines Working Group

⇒ Recommend to the government that any future evaluation of the Pharmaceutical Benefits Advisory Committee review mechanism incorporate an analysis of the gender/social impacts of the changes wrought by the mechanism

1320 ***Access for women with disability***

Women with disability reported difficulty accessing mainstream health services such as preventative breast and cervical screening, due to inadequate policy frameworks which do not include women with disability as target groups, lack of data on women with disability and the prevalence of cancers, the physical inappropriateness of the medical equipment used, costs (even if a doctor bulk bills the accessible transport and carer costs associated with the appointment can be prohibitive), and the manner in which these procedures are performed. For example, Women with Disabilities Australia (WWDA) note that the Australian Government funded National Breast Cancer Centre does not include women with disability in its work aimed at reducing inequity of access to information and services. In relation to accessible GP surgeries, WWDA note that only

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<sup>49</sup> Peter Drahos et al., "Pharmaceuticals, Intellectual Property and Free Trade: The Case of the Us-Australia Free Trade Agreement," *Prometheus* 22, no. 3 (2004).

1330 4.9% of surgeries have examination beds with adjustable height mechanisms.<sup>50</sup> Women at our consultations also reported that the sexual health needs of women with disability were also particularly invisible, a finding documented in the past by WWDA.<sup>51</sup>

*We recommend that the CEDAW Committee*

- ⇒ Urge federal/state/territory/local governments to integrate the needs of women with disability into the development of standards and service specifications for all health services, including data collection to ascertain the extent of need;
  - ⇒ Call for federal/state/territory/local governments to target resource allocation to build the capacity of health services to respond to the needs of women with disability, including through appropriate medical equipment, funding and promoting best practice models in relation to specific health issues, including support to develop best practice models for performing procedures
- 1340
- ⇒ Urge the federal/state/territory/local governments to advocate for the inclusion of women with disability in generic health research
  - ⇒ Recommend that federal/state/territory/local governments improve service delivery through ensuring that services are geographically and physically accessible, that information materials are in accessible formats and provide training to service providers to ensure that they are able to respond to the health needs of women with disability.<sup>52</sup>

1350 ***Access for women from NESB backgrounds***

In all consultations women from NESB backgrounds reported challenges in accessing health information in their language and interpreters for use in accessing health services. Women from CALD backgrounds reported a lack of cultural sensitivity and discrimination when accessing health services. While funds are allocated for these services, the level of funding is clearly inadequate. Moreover, while there have been positive developments in understanding the importance of language services in health care, for example the Victorian Language Services Policy launched in 2005, these types of initiatives can be undermined by inadequate funding for such services. As such, policies such as the Victorian Language Services Policy remain recommendatory only rather than mandatory. Funding formulas need to be recalibrated to better assess and provide for such services.

1360 Moreover, there is a lack of research on client perception of language and culturally appropriate health service provision and a lack of adequate knowledge and skills amongst the health workforce to effectively use language services in a health setting.

*We recommend that the CEDAW Committee*

- ⇒ Advise state/territory governments that funding formulas for language service provision in the health sector need to be recalibrated to better reflect the community need
  - ⇒ Recommend that research on client perception of language and culturally appropriate health service provision be supported
  - ⇒ Welcome the adoption of the Victorian Language Services Policy as an example of a constructive policy framework, though note lack of funds to implement the framework
- 1370 undermines its efficacy

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<sup>50</sup> Jenny Bridge-Wright, "Waiting to Be Included - Breast and Cervical Cancer Screening, Where Are the Women with Disabilities?", [Http://www.Wwda.Org.Au/Screen1.Htm](http://www.wwda.org.au/Screen1.Htm)," (2004).

<sup>51</sup> Keran Howe and Carolyn Frohmader, "Going Inclusive: Access to Health Care for Women with Disabilities" <http://www.wwda.org.au/inclusive.htm> (2001)

<sup>52</sup> These recommendations have been prepared by Women With Disability Australia, Keran Howe and Carolyn Frohmader, "Going Inclusive: Access to Health Care for Women with Disabilities. [Http://www.Wwda.Org.Au/Inclusive.Htm](http://www.Wwda.Org.Au/Inclusive.Htm)," (2001).

### ***Access for Indigenous Women***

We share the grave concerns expressed by Indigenous women that Indigenous Australians experience higher levels of ill health, disease and death rates across all age groups. The general quality of life for Indigenous people has declined over the past decade in comparison to overall improvements for non-Indigenous communities.<sup>53</sup>

1380 Indigenous women who live in regional and remote locations frequently do not have access to medical services. There is a shortage of doctors and other health professionals working in the area of Indigenous health. To reach the available health services some women are forced to travel long distances. The distances, the cost of travelling, and the costs and difficulties of finding accommodation while away from home places some medical services beyond the reach of some Indigenous women. In addition, Indigenous women experience discrimination by health care professionals who are unaware or careless of their cultural mores, and who lack respect for the diversity that exists within Indigenous communities. Many health care professionals have inadequate cultural diversity training, and so make invalid assumptions based on women's Aboriginality when providing services.

Serious health concerns for the Indigenous community are exacerbated by the fact that in certain communities, women lack appropriate housing and access to reliable supplies of clean water, adequate sanitation and fresh food.

1390 Indigenous women tend to be "under-screened" in programmes such as the National Cervical Screening program. This is of great concern, particularly when some groups such as Aboriginal women in the Kimberley region of WA have the highest rate of cervical cancer in the whole of WA.<sup>54</sup>

#### *CEDAW Committee consideration of this issue*

1400 The concluding comments for the Third Periodic Report at paragraph 397 noted a concern at the continuing adverse situation of Aboriginal and Torres Straight Islander women. Major causes of concern included a higher incidence of maternal mortality, lower life expectancy, reduced access to the full range of health services, a high incidence of violence including domestic violence, and high unemployment rates. This situation was further compromised by an apparent rise in racism and xenophobia.

#### *We recommend that the CEDAW Committee*

- ⇒ Implore the Australian Government to ensure access to appropriate primary health care, appropriate housing, adequate sanitation and reliable supplies of clean water, and fresh food
- ⇒ Call for federal, state and territory governments to allocate additional funds to recruit and train sufficient health care workers for all Indigenous women to have access to medical services
- ⇒ Encourage consultation with relevant organisations such as the National Aboriginal Community Controlled Health Organisation and Aboriginal and Torres Straight Islander Women's Forum, to develop solutions to increase the participation of Indigenous women in screening programmes
- 1410 ⇒ Urge the collection and publication of statistics on Indigenous women's health, including disaggregated data showing health status by age, location, disability, income, housing status, and educational attainment

*See also Article 14 for rural women's health needs.*

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<sup>53</sup> National Association of Community Legal Centres, *Australian Non-governmental Organisations' Submission to the Committee on the Elimination of Racial Discrimination*, (January 2005), pp50-52.

<sup>54</sup> NACCHO Issues Paper: *How Can Cervical Cancer Incentives Benefit Aboriginal Women?* (National Aboriginal Community Controlled Health Organisation, 31 July 2001)

## **Strengthening the implementation of Article 12**

### ***National Women's Health Policy, women's health outcomes and stand-alone women's health services***

1420 In the Concluding Comments of the Third Periodic Review, the CEDAW Committee welcomed the existence of the *National Women's Health Policy* which had been promulgated by the previous government. The Department of Health and Ageing has indicated that this policy was implemented through the establishment of the National Women's Health Program (NWHP). In 1997, the Australian Government decided to pool funding from the NWHP in to the Public Health Outcome Funding Agreements (PHOFA). The Department of Health and Ageing have indicated that "current national health strategies generally focus on specific health issues, rather than gender specific programs, reflecting a shift in approach to public health."<sup>55</sup> As such, it may be more useful to explore the development of a policy evaluation framework grounded in a gendered analysis of the social and economic determinants of a public health approach to health funding.

*We recommend that the CEDAW Committee*

1430 ⇒ Recommend to the federal/state/territory/local governments that they adopt a policy analysis and development model grounded in a gendered analysis of the social and economic determinants of health

### ***Disaggregated data***

1440 In the Concluding Comments to the Third Periodic Report the Committee recommended that "data and indicators on health should be collected, disaggregated by sex, age, ethnicity, rural/urban areas and other distinctions." As identified in the *Australian Government Report*, the *Australian Longitudinal Study on Women's Health* commenced in 1995 and is scheduled to run for 20 years. To date the survey has run for 10 years and is an important source of information on women's health in Australia. The Australian Bureau of Statistics conducts a triennial National Health Survey which addresses the health status of the population, assessing use of health services, and health-related aspects of lifestyle and other health risk factors. This study includes a supplementary section on women's health which covers screening for breast and cervical cancer, breastfeeding practices, contraceptive practices and use of Hormone Replacement Therapy. The data from this survey is disaggregated by age and sex, but not race, rural/urban areas, disability or other factors. Moreover, health specialists argue that a more constructive picture of health generally and women's health specifically would be provided by data collection which focused on the social and economic determinants of health.

*We recommend that the CEDAW Committee*

1450 ⇒ Call for the ABS to adopt a social and economic determinants approach to its collection of health data  
⇒ Welcome the *Australian Longitudinal Study on Women's Health* and recommend full funding for the final 10-year period

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## **Article 13 – Economic and social rights**

### **Positive Developments**

#### ***Child care funding***

To facilitate their "welfare to work" program (see below) the Australian Government announced in their 2005/2006 Budget a concomitant boost of funding for child care places, including 84,300 outside school hours care places. The Australian Government has also introduced a 30% Child Care

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<sup>55</sup> Department of Health and Ageing, "Correspondence between the Women's Rights Action Network Australia and the Department of Health and Ageing, August 2005."

1460 Tax Rebate to assist families with out-of-pocket child care expenses. This, however, is of greater benefit to those on higher incomes, with little benefit for low income families. Joint funding arrangements between local/state and federal governments are being pursued in Victoria to enable smaller child care centres to expand their operations and secure their financial viability. There are concerns that this type of initiative is being undermined by the tax breaks and benefits accruing to large-scale operators.

*CEDAW Committee consideration of the issue*

The Committee considered the issue of child care in 1995, but did not adopt a Concluding Comment on it. The Committee expressed alarm at an apparent slow down or reversal of achievements made in childcare programs in the 1997 Concluding Comments.

1470 *We recommend that the CEDAW Committee*

⇒ Welcome increased funding for child care places

⇒ Welcome government policies and funding which support the operation of smaller, often community or not-for-profit, child care centres

⇒ Express concern at the recent Australian Government decision to introduce the Childcare Tax Rebate, as this measure provides the greatest benefit for those on higher incomes.

***Utilities relief***

1480 In the context of privatised provision of utilities, the Victorian government has introduced a Utilities Relief Grant Scheme and the non-Mains Utility Relief Grant Scheme which provides a one-off payment to assist with utilities bills to low-income earners in a period of financial hardship.<sup>56</sup> Low-income women with children have been negatively affected by the increased costs associated with utilities in an era of privatisation.<sup>57</sup>

*We recommend that the CEDAW Committee*

⇒ Welcome the operation of the Victorian Utility Relief Grant Scheme and recommend its adoption in other state/territories

**Challenges in implementation of Article 13**

***Welfare reform***

1490 The Australian Government is currently considering a range of changes to the welfare support system which will have a particular impact on sole parents and women with disability. The changes are aimed at increasing the workforce participation levels of sole parents and people with disability. An update to the following information will be provided in January 2006.

***Sole parents***

1500 Women comprise 83.3% of sole parents in Australia, and the majority of recipients of PPS.<sup>58</sup> Therefore, any changes to the sole parent income support programs will have a disproportionate impact on women. Currently, sole parents who meet various income and asset tests are eligible for income support known as the Parenting Payment Single (PPS). For the most part, these income and assets tests mean that the PPS is available to low-income women. Receipt of the PPS also enables sole parents to receive the Pensioner Concession Card which entitles them to a range of subsidised prices, such as concession fares on public transport.

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<sup>56</sup> Department of Human Services, "Website Factsheet on the Utility Relief Grant Scheme, [http://www.dhs.vic.gov.au/concessions/docs/utility\\_relief.pdf](http://www.dhs.vic.gov.au/concessions/docs/utility_relief.pdf)," (2005).

<sup>57</sup> Brotherhood of St Laurence, "Changing Pressures 1998, Electricity, Gas and Water Costs and Choices for Vulnerable Households," *Bulletin* 5 (1998).

<sup>58</sup> National Foundation for Australian Women "What Women Want: Record of Proceedings" July 2005-11-04 <http://www.nfaw.org/p-r-2005-income-ir3-project.pdf>

In changes mooted by the government, after 1 July 2006 new applicants for the PPS will be transferred to the Newstart Allowance (the Australian unemployment benefit) as soon as their youngest child turns eight, and required to look for work for a minimum of 15 hours per week .

There are a range of detrimental impacts which have been identified:

- National Centre for Social and Economic Modelling (NATSEM) modelling commissioned by the National Foundation for Australian Women has revealed that, post 1 July 2006, recipients of the PPS will lose \$29 per week when their youngest child turns six and they are transferred to Newstart
- 1510 • “Those working 15 hours per week to meet their obligations as Newstart recipients will not receive sufficient financial gains from their work, due to income test – tax interactions. Costs associated with working include transport, childcare, uniforms, mobility aids and an increase in rent for public housing tenants receiving a greater gross income.”<sup>59</sup> NATSEM suggests lost income could be as high as \$96.50 per week<sup>60</sup>
- “The activity test requirement for Newstart is to seek work (10 job applications per fortnight) and accept 15 hours of work per week. An available job offer must be accepted, or recipients will be penalised. This job may not offer family-friendly employment conditions:
  - it may not fit in with school hours which raises the issue of care for children during that time
  - 1520 ○ casual employment may not provide parents with leave entitlements which can be used during school holidays
  - it may involve up to 90 minutes travel time each way and still count as a legitimate job offer under Newstart guidelines”<sup>61</sup>
  - Recipients of Newstart can be penalized for moving to an area of lower employment, but new sole parents may need to do this in order to move closer to family supports/cheaper housing
- In contrast to PPS, Newstart requires that recipients wait 13 weeks for payments if they have \$5,000 or more in the bank. Thus, parents who have received lump sums from Family Tax Benefit payments, child support arrears or proceeds from their property settlement could be forced to deplete resources which should be used to re-house themselves<sup>62</sup>
- 1530 • Access to education may also be detrimentally affected, with a lack of clarity in relation to whether tertiary education or Newstart Apprenticeships would be recognised as satisfactory forms of participation. Currently, Newstart requires that you look for full-time work even if you are studying

### ***Women with Disability***

Women comprise approximately 40% of recipients of the Disability Support Pension (DSP). The DSP is the primary income support payment for people with disability who have been assessed as unable to work for at least 30 hours a week (or undertake training that would equip them for work). Under changes proposed after 1 July 2006

- 1540 • a new “comprehensive work capacity assessment” will be used to identify individuals who can work 15 to 29 hours per week at award wages in the open labour market

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<sup>59</sup> National Foundation for Australian Women, "Key Points, [Http://www.Security4women.Com/Www\\_Keypoints\\_180905.Pdf.](http://www.Security4women.com/www_keypoints_180905.pdf)"

<sup>60</sup> Ann Harding et al., "The Distributional Impact of the Proposed Welfare-to-Work Reforms Upon Sole Parents," (Canberra: NATSEM, 2005).

<sup>61</sup> National Foundation for Australian Women, "Key Points, [Http://www.Security4women.Com/Www\\_Keypoints\\_180905.Pdf.](http://www.Security4women.com/www_keypoints_180905.pdf)"

<sup>62</sup> National Council of Single Mothers and their Children, "Press Release: New Welfare Rules to Hit Divorce Property Settlements," (2005).

- people assessed as being able to work 15 or more hours per week will no longer be eligible for the DSP. Instead, they will receive the Newstart or the Youth Allowance
- Australian Council of Social Service (ACOSS) estimate in 2006 a person with disability will be \$46 per week worse off if jobless and up to \$164 per week if a full time student.<sup>63</sup>
- NATSEM estimate that people with disability will face effective marginal tax rates of up to 75%, and the net income of people with disability earning between \$145 and \$405 per week will be up to 25% less than people in receipt of the DSP<sup>64</sup>
- 1550 • Moreover, women with disability face a range of structural barriers which reduce their capacity to gain employment, and this new regime does not take this into consideration<sup>65</sup>
- Women with disability have low labour force participation rates, higher unemployment rates and poorer types of employment options than men with disability and women in general. NATSEM noted that this suggested the need for further research into the impact of gender differences under the proposed changes<sup>66</sup>
- NATSEM have also proposed a number of constructive options aimed at alleviating the adverse impacts of the proposed changes on people with disability and sole parents<sup>67</sup>

*CEDAW Committee consideration of the issue*

1560 Pension programs were raised during the Constructive Dialogue in 1995, but no concluding comment was issued on the issue.

*We recommend that the CEDAW Committee*

- ⇒ Call for the Australian Government to commit to a “no disadvantage” principle in implementing the “welfare-to-work” changes
- ⇒ Call for a gender-based analysis of the impact of proposed changes before they are introduced, while they are being implemented and post implementation
- ⇒ Call on the Australian Government to consider the recommendations of the federally-funded women’s secretariats in relation to these changes, including reasons for exemption from and the way participation requirements are applied, protections against unfair decisions and financial hardship, flexibility in Newstart rules.
- 1570 ⇒ Urge the Australian Government to consider applying the NATSEM options for alleviating the adverse impact of the proposed welfare-to-work changes.

***Indigenous Women and Welfare***

1580 There is an increasingly punitive approach to welfare and benefit payments in remote Aboriginal communities. A system of Shared Responsibility Agreements (SRAs) was part of the Australian Government’s stated plan to engage with Indigenous communities after the abolition of ATSIC. While it may be said that SRA’s provide some communities with the chance to negotiate for funding that may not have been previously available, this does not make the process fair or equitable. A principal criticism of SRA’s is that they make the provision of basic services and infrastructure, which government owes to all citizens, contingent upon specific behavioural change in Indigenous communities, and in so doing, place the responsibility for existing problems and lack of progress wholly on to Indigenous communities.

<sup>63</sup> Australian Council of Social Service, *Who is Worse Off? The regional distribution of people affected by the Welfare to Work policy*, Sydney October 2005

<sup>64</sup> Ann Harding, Quoc Ngu Vu, and Richard Percival, "The Distributional Impact of the Proposed Welfare-to-Work Reforms Upon Australians with Disabilities," (Canberra: NATSEM, 2005).

<sup>65</sup> National Foundation for Australian Women, "Key Points, [Http://www.Security4women.Com/Www\\_Keypoints\\_180905.Pdf](http://www.Security4women.Com/Www_Keypoints_180905.Pdf)"

<sup>66</sup> Ann Harding, Quoc Ngu Vu, and Richard Percival, op. cit., pp. 12-13

<sup>67</sup> Ann Harding, Quoc Ngu Vu, and Richard Percival, *Options for Reducing the Adverse Impact of the Proposed Welfare-to-Work Reforms Upon People with Disabilities and Sole Parents*, Canberra, November 2005

There is a presumption that SRA's are a type of contractual arrangement entered into by choice, and negotiated between two equal parties. However, there is an enormous power imbalance both in negotiating capacity and built into the substance of the agreements.

Indigenous communities are put in the position of having to compete with each other for a specific pool of government funding - often for essential services that non-Indigenous communities simply expect to be provided.

1590 In the remote Kimberley town of Halls Creek, in the north of Western Australia, parents whose children do not attend school face having their social security payments cut off.<sup>68</sup> This accords with new Centrelink policy as proposed by Minister for Indigenous Affairs, Amanda Vanstone, in which parents in remote Aboriginal communities will only receive welfare payments if their children attend school, and attend school "clean".<sup>69</sup> This policy in particular affects women headed households and sole parent households. There are numerous reasons why an Indigenous child may not attend school. Making education conditional upon parents accepting and adhering to government imposed standards places an additional barrier to children's education. It also frees Government actors from having to examine the education system and curriculum to assess real causes of non-attendance by Indigenous children. To implement such a punitive and overtly discriminatory policy also places women and children at risk of having insufficient income to afford such basics as food, shelter and essential medicines.

*We recommend that the CEDAW Committee*

⇒ Express concern about the risk of inequitable provision of essential services to remote Indigenous communities via the mechanism of "Shared Responsibility Agreements"

***Accessibility to housing and public buildings for women with disability***

1610 The issue of housing accessibility for women with disability was raised during the consultation process in Australia. The government report provides information on support programs for people with disability, which we welcome. However, no information is provided as to the current or proposed legislative and policy frameworks for ensuring accessibility in residential housing developments, both private and public in nature. Building design in Australia is guided by a national code, which is administered at a state and territory government level. However, there is currently no national code on accessibility in housing, and the issue is regulated on an ad hoc basis with both local and State governments involved. Advocates in the sector are calling for a national code for universal housing design.

1620 Rights of people with disability are given effect by the *Disability Discrimination Act 1992* (Cth) (DDA) which in 2000 was amended to enable the Australian Government's Attorney-General to develop *Disability Standards for Access to Premises*. The Australian Building Codes Board is currently considering how sections of the Building Code of Australia (BCA) dealing with public buildings should be amended to make them consistent with the DDA. Significant concerns have been expressed about the exemptions that are being considered in this process, including allowing new multi-storey buildings to be constructed without ensuring access, for example, buildings of up to 3 floors could be constructed without lifts. This is likely to have a particular impact in suburban and regional areas where smaller buildings are more common. The disability sector note that the upper floors of small buildings are often used for small, office-based businesses such as accountants, solicitors, dentists, physiotherapists, chiropractors, or the administration sections of medium sized retail/commercial businesses, etc. Lack of accessibility will eliminate these offices as potential work sites or service providers and will pose a barrier to employment and service access for people with disability.

<sup>68</sup> [www.abc.net.au/news/wa/Kimberley/200510/s1476773.htm](http://www.abc.net.au/news/wa/Kimberley/200510/s1476773.htm)

<sup>69</sup> *Australian Non-Government Organisations' Submission to the Committee on the Elimination of Racial Discrimination* (National Association of Community legal Centres, January 2005) p.58

*We recommend that the CEDAW Committee*

- 1630 ⇒ Recommend to the Attorney-General that a national code for universal housing design be developed and adopted
- ⇒ Assert to the Australian Building Codes Board and the Attorney-General that the *Disability Standards for Access to Premises* be adopted in an open and transparent process, and ensuring that provisions for exemptions do not undermine the purpose of the DDA

### ***Stolen wages and entitlements***

- For a large part of last century, various State and Territory governments took wages earned by Indigenous women and men, and held those monies in trust accounts “for their own good”. Government administrators of these trusts resisted Indigenous applications for their own money.
- 1640 The record keeping for these accounts were extremely poor, and much of that money went astray. Despite the incomplete documentation, it is possible to identify some people and some categories of people who may have a claim for withheld wages and entitlements.<sup>70</sup>

*We recommend that the CEDAW Committee*

- ⇒ Urge the Australian Government to launch a national inquiry into the stolen wages case, with a view to formulating a payback proposal

### ***Housing***

- Under-reporting of the number of women who are homeless is a significant challenge. Women’s experiences of homelessness are different to those of men, with many women reporting that they stay with friends or sleep in cars, rather than enter shelters. Statistical collection processes do not adequately reflect these experiences.
- 1650

- Discrimination against women in the public housing, private rental and financial sector detrimentally affects women’s realisation of their right to housing. For example, women in the NT noted that Indigenous women experienced discrimination in the public housing system through rigorous enforcement of a requirement for referees, which is not exercised for non-Indigenous women. Even when able to access public housing, Indigenous women have expressed concern that poorly designed “fibro” or tin houses in the hot north of Australia, are uninhabitable. Many houses in which women are placed also lack security, which is of particular concern to women escaping domestic violence. Public housing therefore continues to fail to meet the needs of many Indigenous women and their families. Women with disability in Victoria reported difficulty accessing public housing and transitional accommodation. In particular, the reduction in public housing stock and the practice of leasing private rental stock for public housing use militates against modifications to properties to make them accessible for women with disability. Women applying for private rental accommodation in NSW reported discrimination against women with more than three children. In Victoria and WA source of income (ie, welfare payments) was used to reject rental applications. Discrimination was also prevalent in rural areas against young women. Racism also has a negative impact on successful private rental applications. While not all forms of discrimination identified above have been addressed through the anti-discrimination frameworks, race and age discrimination is illegal.
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- 1670 In the financial sector women reported a range of discriminatory practices which had a detrimental impact on their capacity to secure a loan for housing. Participants reported that banks practice routine discrimination, despite the existence of equal opportunity legislation. For example, they may require a male guarantor for a woman applying for a loan, or deliberately deal primarily with a male partner in the case of couples. Beyond this it was felt that the statistics used by banks on women’s lifetime possible income, which is becoming comparatively less than men’s, due to the

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<sup>70</sup> *Ibid*, pp44-45.

increased casualisation and insecurity of women’s jobs, leads banks to offer smaller, shorter-term loans to women than to men.

1680 Limitations to state/territory legislation on residential tenancies and forced evictions were reported. For example, the *Residential Tenancies Act 1997 (Vic)* (RTA) does not recognise that women being forced to leave their home because of violence are being evicted by the perpetrator of violence. The RTA considers those women to have voluntarily vacated the premises, making them liable for rental and other costs associated with a broken lease and damage caused by their partner. Failure to pay their share of rent is a common form of financial abuse perpetrated by male partners. Women then fall into rent arrears and are blacklisted by real estate agents. Moreover, many women who lived in violent relationships are put on private rental “blacklists” because of damage done by partners or complaints made by neighbours due to disturbances resulting from the violence.

*We recommend that the CEDAW Committee*

- ⇒ Stipulate that data collection/statistical information be amended to accurately reflect women’s experiences of homelessness
- 1690 ⇒ Urge state/territory governments to review *de facto* and *de jure* discriminatory practices in the public housing programs
- ⇒ Recommend that state/territory governments develop community education programs to address discriminatory practices in the private rental markets
- ⇒ Urge state/territory governments to adopt anti-discrimination measures which address income level and source of income
- ⇒ Call for state/territory governments to examine *de facto* discrimination in the banking sector and take steps to rectify such discrimination
- ⇒ Call on state/territory governments to address discriminatory provisions of residential tenancies legislation, particularly the relationship of domestic violence to forced eviction

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### ***Discrimination on the basis of occupation***

Sex workers reported that they experienced discrimination on the basis of their occupation. For example, they reported discrimination from banks when applying for loans, discrimination from real estates agents when applying for rental properties or looking for property to buy, and discrimination in their interaction with the family legal system when negotiating child access arrangements. The ACT anti-discrimination framework incorporates occupational discrimination.

*We recommend that the CEDAW Committee*

- ⇒ Call on federal/state/territory governments to examine the nature of occupation-based discrimination experienced by sex workers, and consider inclusion of “occupation” in the anti-discrimination framework, for example, by referring the issue to law reform commissions

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## **Article 14 – Rural women**

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### **Challenges in the implementation of Article 14**

#### ***Utilities***

1720 Pre-payment meters for electricity have been introduced in some Australian states (SA, WA and Tasmania), which we understand has had a disproportionate focus on low-income, rural and Indigenous communities. There are concerns that this program will reduce equal access to electricity, and that it may exacerbate domestic violence. Additionally, in some cases, the practice is beyond the current consumer protection framework.

*We recommend that the CEDAW Committee*

- ⇒ Urge state and territory governments to conduct the comprehensive research required to address the gendered impacts of pre-payment meters and the ongoing impact of the privatisation of utility services
- ⇒ Assert that where pre-payment meters are beyond the scope of the current consumer protection frameworks, state/territory governments need to introduce adequate reforms to the framework

### **Health Services**

1730 Women living in rural, regional and remote areas reported a range of access issues in terms of general and specialist health services. Many of the issues raised in our consultations have been addressed in the policy paper *Healthy Women, Healthy Communities*, produced by the National Rural Women's Coalition. This report identifies a range of health issues, including

- Depression and mental health for women and their families: 53% of women reported that mental health services were difficult to access, and 43% of women reported that counselling services were difficult to access
- Access to medical services: 60% of women reported that bulk billing is difficult to access, and 65% reported that specialists are difficult to access. Moreover, 66% of women reported that they were required to travel to a regional centre to access health care services, with 84% of these women reporting that there was no public transport to this regional centre. This is indicative of the tremendous impact location has on access to health services. In addition, financial costs associated with travelling to the specialist, and the lack of family support occasioned by travelling to the specialist added to the stress of illness
- Adolescent pregnancy: high rates of adolescent pregnancy were reported. Lack of information, limited or no access to abortion, limited confidentiality in seeking advice, and high levels of socio-economic disadvantaged were cited as possible causal factors
- Maternal health: 51% of women reported that they had difficulty accessing maternity services, and 58% reported finding it difficult to access birthing centres<sup>71</sup>

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*We recommend that the CEDAW Committee*

- 1750 ⇒ Commend the findings of the National Rural Women's Coalition report *Healthy Women, Healthy Communities* which called for appropriate funding of health services in rural communities based on a collaborative, community-based, approach to modeling services to meet the needs of individual communities

### **Violence Against Indigenous Women**

1760 Indigenous women in rural and regional areas, particularly in remote communities, are especially vulnerable. Many communities do not have access to adequate police services or to safe houses. Some communities may rely on flights in and out as the only feasible form of transport, especially during "the wet season", or they may be completely cut off for extended periods of time. The distances and cost of transport may rule out leaving the community to seek help, even when a woman is at great risk.<sup>72</sup> This also may rule out police getting to a community within a reasonable time to offer any assistance or protection.

*We recommend that the CEDAW Committee*

- ⇒ Urge federal, state and territory governments to fund additional services required to address the high incidence of family and domestic violence suffered by Indigenous women in rural, regional and remote areas

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<sup>71</sup> National Rural Women's Coalition, "Health Women, Healthy Communities," (Canberra: NRWC, 2005).

<sup>72</sup> WRANA, *Our Rights, Our Voices: The Northern Territory Community Report on Women's Human Rights in Australia* (WRANA, December 2004), p.5.

**Article 15 – Equality Before the Law**  
**Article 16 – Equality in Family Relations**  
**Violence Against Women**

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1770

**Equality Before the Law**

**Positive Developments**

Federal, state and territory law reform commissions have conducted important work during this reporting period on the areas of violence against women. For example, the NSW Law Reform Commission released a report into apprehended violence orders; the Victorian Law Reform Commission have been engaged in processes relating to defences to homicide, including a careful consideration of issues affecting women in this context, sexual offences, access to artificial reproductive technologies, and also more recently a combined report with the Australian Law Reform Commission and the NSW Law Reform Commission on family violence. The Tasmanian Law Reform Commission has considered the forfeiture rule for women who kill violent partners, and adoption by same sex couples (which included a recommendation that same sex couples should be able to adopt). The ACT Law Reform Commission (when it operated) considered the laws relating to sexual assault, and the WA Law Reform Commission are investigating defences to homicide, including self defence and provocation.

*We recommend that the CEDAW Committee*

⇒ Welcome the work of the Law Reform Commissions, and commend their recommendations to governments in the appropriate jurisdictions

**Areas of Concern**

1790 ***Indigenous Women***

Access to justice goes beyond merely access to legal services. Rather it encompasses the capacity of Indigenous women to be truly “equal before the law”. This is not currently the case in Australia. Indigenous women often have no input at all into the administration of the justice system; Indigenous women face systemic and institutionalised discrimination; Indigenous women often do not have access to information in appropriate languages and formats; Indigenous women often do not have access to appropriate counselling and other services<sup>73</sup>. In other words, Indigenous women are not treated as equal before the law, and their access to justice is severely compromised.

***Women with disability***

1800 Submission from Sisters Inside (Qld),<sup>74</sup> Beyond Bars (NSW)<sup>75</sup> and the Federation of Community Legal Centres (Vic)<sup>76</sup> as well as recent NSW and Victorian surveys<sup>77</sup> provide evidence that there is an over-representation of women with disability, particularly intellectual and psychiatric disability in prisons. While the lack of statistical information prevents exact prevalence rates of intellectual disability in the prison population being determined, estimates show that it is greater than the prevalence of intellectual disability in the general population. Twelve month prevalence rates for psychiatric disability among NSW female prisoners are as high as 86% compared to 72% among NSW male prisoners.<sup>78</sup> This is consistent with Victorian and international prevalence rates.

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<sup>73</sup> *Australian Non-Government Organisations' Submission to the Committee on the Elimination of Racial Discrimination* (National Association of Community Legal Centres, January 2005), p.29.

<sup>74</sup> <http://www.sistersinside.com.au/media/adcqsubmission.pdf>

<sup>75</sup> <http://www.sistersinside.com.au/media/NSWADCreport.pdf>

<sup>76</sup> <http://www.sistersinside.com.au/media/VICComplaint.pdf>

<sup>77</sup> Corrections Health Service, *Mental Illness Among NSW Prisoners*, 2003; Department of Justice, *Victorian Prisoner Health Survey*, 2003

<sup>78</sup> Corrections Health Service, *ibid.*, 15

*We recommend that the CEDAW Committee*

- 1810 ⇒ Recommend that state and territory governments work collaboratively to develop a national, comprehensive framework to address the over-representation of women with disability in the criminal justice system, which includes data collection and analysis, community support and care programs, legal support and assistance, diversionary programs and community based sentencing options.

## **Strengthening the implementation of Article 15**

### ***Access to legal services***

- 1820 While the government has increased funding in some areas to the *Commonwealth Community Legal Services Programme*, many women, particularly young and older women, women with disability, women from Culturally and Linguistically Diverse Backgrounds, women in rural, regional and remote areas, and Indigenous women, reported that they still do not have access to timely and appropriate legal information, advice, casework and court representation. Many experience intersectional discrimination in attempting to access justice.

The Senate Legal and Constitutional Committee report on “Legal Aid and Access to Justice”, released in June 2004, made numerous recommendations to ensure increased access to justice for women. It is unclear what steps have been taken to implement these findings.

Moreover, in order to access legal assistance and have access to justice, many women require the assistance of interpreters. While the Translating and Interpreting Services provides services to many women from Non-English Speaking backgrounds, there are few services available to Indigenous women.

### ***Over-policing and incarceration of Indigenous Women***

- 1830 Young Indigenous women attract high levels of police scrutiny, particularly when out at night. They report being questioned about their activities, with insinuations or direct accusations of prostitution or other unlawful activities. In the event that they react to such questioning, they often find themselves arrested and thus drawn into the criminal justice system. In 2003 Indigenous women were incarcerated at a rate 19.3 times that of non-Indigenous women.<sup>79</sup> This high incarceration rate reflects in part the over-policing of Indigenous women.

### ***CEDAW Committee consideration of the issue***

The Committee noted a previous Australian Law Reform Commission report on equality before the law in the 1997 Concluding Comments and expressed concern that fiscal retrenchment could reduce funding for legal aid.

- 1840 *We recommend that the CEDAW Committee*

⇒ Commend to the Australian Government the Senate Legal and Constitutional Committee report recommendations

## **Equality in Family Relations**

### **Positive Developments**

#### ***Child Support***

- 1850 We welcome the proposed changes to increase the power of the Child Support Agency to enforce child support. However we are concerned that they fall well short of the recommendations of the House of Representatives Standing Committee on Family and Community Affairs report, ‘*Every Picture tells A Story*’. Child support arrears with the Child Support Agency continue to increase each year and in June 2005 are more than \$700 million.

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<sup>79</sup> Human Rights and Equal Opportunity Commission, *A Statistical Overview of Aboriginal and Torres Strait Islander Peoples in Australia* (2004) [www.humanrights.gov.au/social\\_justice/statistics/index.html](http://www.humanrights.gov.au/social_justice/statistics/index.html)

*We recommend that the CEDAW Committee*

⇒ Commend the recommendations on child support in *Every Picture Tells A Story* to the government

## **Areas of Concern**

### ***Care of children post-separation***

1860 In 2003, the Australian Government announced an inquiry into contact and residency issues for children post the separation of their parents. The 2003 Inquiry was grounded in a 2001 governmental study on the same issues which argued that the system was overly adversarial and did not meet the best interests of the child. The report of the 2003 Inquiry states

For many years the Australian community has been extremely concerned about contact and residency issues following marriage and relationship breakdown and their experiences with the Family Court and the Child Support Agency. These have been critical issues brought to the daily agenda of members of parliament by their constituents.<sup>80</sup>

1870 As such, in particular, the inquiry was to focus on the operation of the Family Law Court of Australia and the Child Support Agency. The Family Law Court was established in 1975 to provide a separate legal system for the legal issues associated with the separation of partners/parents. The Child Support Agency was established in 1988 to administer the Child Support Scheme, a regulatory framework for securing child support payments between separated parents. Prior to the establishment of the child support could only be obtained if the parents were able to reach an agreement or through a court order.

1880 The 2003 inquiry was conducted by the House of Representatives Standing Committee on Family and Community Affairs. They conducted community consultations and produced a report, *'Every Picture tells A Story'*. The government released its response to the report and an exposure draft of legislation to address the recommendations in the report, *Family Law Amendment (Shared Parental Responsibility) Bill*, in June 2005. In August 2005 the House of Representatives Legal and Constitutional Committee released their report into the exposure draft of the bill, which critics have argued incorporates an alarming focus on dealing with 'false allegations' of violence and abuse rather than with the violence and abuse itself by proposing that costs could be awarded against an applicant if a false allegation of domestic violence is promulgated by an applicant. They are also concerned that the Committee tends to emphasise equal time arrangements rather than positive shared parenting, which is likely to encourage parents to focus on their 'rights' to equality rather than how they can share the parenting of their children in the best way possible for those children, and could perpetuate the control that non-resident parents can, and often do, control the lives of resident parents through the court process.<sup>81</sup> The Attorney-General views the issues being considered in this process as essential to "bring about a cultural shift in how family separation is managed: away from litigation and towards cooperative parenting."<sup>82</sup>

1890 There are a number of concerns about this process. Procedurally, women's organisations are concerned that a small number of disaffected fathers have been able to greatly influence the government agenda. Substantively, women's organisations are concerned that

⇒ the requirement for compulsory mediation will have an adverse effect on women leaving domestic violence and

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<sup>80</sup> Standing Committee on Family and Community Affairs, "Every Picture Tells a Story: Inquiry into Child Custody Arrangements in the Event of Family Separation," (Canberra: Australian Parliament, 2003).

<sup>81</sup> National Network of Women's Legal Services, "Response to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005," (2005).

<sup>82</sup> Australian Government Attorney-General, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Attorney-General, August 2005."

⇒ that the emphasis on shared parenting time could actually undermine rather than enhance the best interests of children who have lived with domestic violence

1900 While domestic violence cases are stated to be exempt from the requirement for compulsory mediation prior to court proceedings specific legislative changes proposed may undermine this exemption. There is also a real risk that mediation services will not identify “domestic violence” so as to exempt women from compulsory meditation. An update on this issue will be provided in January 2006.

*We recommend that the CEDAW Committee*

⇒ Express concern that the *Family Law Amendment (Shared Parental Responsibility) Bill* could have an adverse impact on women leaving domestic violence and could undermine the realisation of the best interests of children who have lived with domestic violence

### ***Indigenous Women and Children***

1910 We share the grave concerns of Indigenous women participating in this project at the ongoing failure by the Government to engage in real dialogue with Indigenous women to formulate practical and positive strategies to protect children at risk. Of the submissions provided to the “National Inquiry into the Separation of Aboriginal and Torres Straight Islander Children from their Families”, not one Indigenous organisation saw the current statutory interventions by child welfare department to be an effective response to their communities’ child protection needs.<sup>83</sup> There is a strong argument that the current mainstream child protection models based on pathologising particular individuals and families are not applicable to Indigenous culture.<sup>84</sup>

1920 Past and current regimes of protecting Indigenous children have failed, and often inflicted great damage on Indigenous children. Indigenous children continue to be removed from their families and placed “in care” at six times the rate of non-Indigenous children,<sup>85</sup> perpetuating a cycle that spans generations, of removing children from their families and communities. In 2000, Aboriginal and Torres Straight Islander Children comprised 2.7% of children in Australia, but were 20% of those placed in “out-of-home” care.<sup>86</sup> Often there are not enough appropriate Indigenous carers for children who are placed “in care”, so children are placed elsewhere, removed from their communities and culture. Where appropriate carers are found insufficient support is provided for those carers.

*We recommend that the CEDAW Committee*

⇒ Urge the Australian Government to seek the advice of Indigenous women to review the statutory child protection mechanisms as they affect Indigenous children, to halt the damage being done by the existing regime

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## **Violence Against Women**

### **Positive Developments**

#### ***Women’s Safety Agenda***

In 2005, the Australian Government announced the four-year program, the *Women’s Safety Agenda* as the next stage in its campaign to eliminate violence against women in Australia. The *Women’s Safety Agenda* builds on the work of the *Partnerships Against Domestic Violence* and the *National*

<sup>83</sup> Stanley, J. Tomison, A.M. Pocock, J. *Child abuse and neglect in Indigenous Australian Communities - Issues Paper No 19, Spring 2003* (Australian Institute of Family Studies: National Child Protection Clearinghouse, 2003), pp23-24.

<sup>84</sup> Cunneen, C. & Libesman, T. *A Review of International Models for Indigenous Child Protection* (Department of Community Services, 2002) <http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/IndigLRes/2002>

<sup>85</sup> <sup>85</sup> Stanley, J. Tomison, A.M. Pocock, J. *Child abuse and neglect in Indigenous Australian Communities - Issues Paper No 19, Spring 2003* (Australian Institute of Family Studies: National Child Protection Clearinghouse, 2003), p.5

<sup>86</sup> Cunneen, C. & Libesman, T. *Postcolonial trauma: The contemporary removal of Indigenous children and young people from their families in Australia* (Australian Journal of Social Issues, vol.35, no.2).

*Initiative to Combat Sexual Assault.* The *Women's Safety Agenda* is a fiscal manifestation of the Australian Government's leadership on this issue, and is to be commended.

***Integrated and innovative service responses***

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- The groundbreaking 2004 VicHealth research report, *The Health Costs of Violence*, highlighted the cost to the community of the diseases and illnesses women experience as a result of violence
  - Remote models for service delivery for women, while seriously under-funded, are very effective. These services include the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Aboriginal Corporation (NPY) Domestic Violence Service and the Family Violence Prevention Legal Units in the Northern Territory
  - During this period police forces across the country have recommitted themselves to responding effectively to violence against women. For example, in the Victoria Police *Code of Practice for the Investigation of Family Violence* was launched in 2004 and has seen a 69% increase in charges being laid in relation to family violence
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- Following public airing of allegations of sexual assault by players in various sporting codes in Australia, the Australian Football League (AFL – the major sporting code in Australia) has released *Respect and Responsibility – Creating a safe and inclusive environment for women at all levels of Australian football*

*We recommend that the CEDAW Committee*

- ⇒ Welcome the leadership of all levels of government in the area of violence against women
- ⇒ Welcome the funding commitments to a diverse range of programs, but remind all levels of government that preventative measures are integral to strategies to end violence against women, and that the expertise of existing specialist services should inform future programs
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- ⇒ Welcome initiatives from federal, state and territory governments, but remind authorities to ensure ongoing local consultation in relation to the development, implementation and evaluation of these programs to ensure that the programs respond to local concerns, particularly in rural and remote locations

***Action Plans and a Whole of Government approach***

A number of state/territory governments have adopted targeted action plans addressing the prevalence of violence against women, and promoting a “whole of government” approach to eliminating violence against women.

*We recommend that the CEDAW Committee*

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- ⇒ Welcome the leadership shown by state/territory governments in adopting Action Plans and addressing violence against women in a “whole of government” approach

***Areas of Concern***

***Violence Against Women***

- One result of the *Women's Safety Agenda* was the *Violence Against Women – Australia Says No* campaign,<sup>87</sup> taking the form of a series of media advertisements and brochures encouraging people to contact a hotline number if they are victims of violence or aware of violence being inflicted on women of their acquaintance. Concerns have been raised about the campaign, particularly because of the reactive, rather than preventative, nature of its recommendations,<sup>88</sup> the referral of women to
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- non-specialist counsellors, and the fact that specialist domestic violence and sexual assault services

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<sup>87</sup> Campaign materials available at <http://www.australiasaysno.gov.au/>

<sup>88</sup> Domestic Violence and Incest Resource Centre <http://www.dvirc.org.au>

were not invited to tender to provide this telephone service. The campaign was also criticised for focusing primarily on physical and sexual assault.<sup>89</sup>

### ***Domestic and Family Violence against Indigenous Women***

In some areas of Western Australia the incidence of family violence is 45 times higher than that of non-Indigenous women and Indigenous women are ten times more likely to be killed as a result of domestic violence than non-Indigenous women.<sup>90</sup> It has been suggested that in some Indigenous communities, up to 90% of families are affected by violence.<sup>91</sup>

1990 As with the non-Indigenous community, it is recognised that Indigenous family violence is manifestly under-reported.<sup>92</sup> Numerous reasons are given for this, including extreme reluctance to approach government agencies, including the police, because of extremely negative experiences with such agencies.<sup>93</sup> Work in the Cape York communities argues that under-reporting occurs because of “fear of imprisonment of family members, loyalty to family and community, lack of information, inability to attract police presence, and a lack of cultural sensitivity from support services.”<sup>94</sup> Where women are willing to approach the police, a general frustration has been reported by Indigenous women in relation to inappropriate and inadequate police responses.<sup>95</sup>

#### *CEDAW Committee consideration of the issue*

In the 1997 Concluding Comments the leadership role of the Australian government in relation to VAW was welcomed, expressed some concern at possible retrenchments in spending on VAW, and noted with particular concern the incidence of violence against Indigenous women.

2000 *We recommend that the CEDAW Committee*

⇒ Urge the Australian Government to engage in consultation with Indigenous women, particularly those living in remote and regional communities, to develop culturally appropriate domestic violence and support services

### ***Housing and domestic violence***

2010 While the *Agenda for Safety* provides an important focal point for government funding, domestic violence support services receive their primary funding through the homelessness policy and budget, the Supported Accommodation and Assistance Program (SAAP), which “purchases” emergency accommodation from a variety of NGOs. SAAP funding is negotiated on a cyclical basis between the Australian Government and State/Territory Governments. SAAP V has been the subject of intense (and protracted) negotiations in 2005, though they were successfully concluded in September. The Australian Federation of Homelessness Organisations argued that in order to keep the homelessness system at the existing level an increase of 15-20% in funding was required. The Australian Government offered 2.1%, the wage cost index. Additional funds were provided by State/Territory Governments, who responded to the Australian Government challenge to match funding 50-50. The Government argues that following an injection of funds into SAAP IV “just putting extra money into SAAP does not bring about change or reduce unmet demand.”<sup>96</sup> AFHO argues that the additional money was provided by the government to help homeless people meet the additional costs associated with the introduction of the Goods and Services Tax in 2000.

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<sup>89</sup> WRANA, "Our Rights, Our Voices - The National Community Report on Women's Human Rights in Australia," (Melbourne: WRANA, 2004), 10.

<sup>90</sup> Ferrante et al (1996) *Partnerships Against Domestic Violence*, (2000) No 24 p.10

<sup>91</sup> Queensland Domestic Violence Taskforce (1988) I, 2002 No25p.29

<sup>92</sup> Aboriginal and Torres Strait Islander Women's Task Force on Violence (ATSIWTFV), 1999 No.21

<sup>93</sup> Blagg, 2000 No 22p.9

<sup>94</sup> *Partnerships Against Domestic Violence*, 2000 No. 23p.3

<sup>95</sup> *Partnerships Against Domestic Violence*, 2000 No.23p.1

<sup>96</sup> Australian Government Office for Women's Policy, "Correspondence between the Women's Rights Action Network Australia and the Australian Government Office for Women, August 2005."

2020 In 2003-2004, 33% of people entering a SAAP service were women escaping domestic violence. Of this group 24% were Indigenous women, 57% were Australian-born non-Indigenous women, 15% were born overseas in a predominantly non-English-speaking country, and 4% were born overseas in a predominantly English-speaking country.<sup>97</sup> The Women's Emergency Services Network has indicated that domestic violence agencies in the Supported Accommodation Assistance Program receive about \$100,000 less per agency when compared with single men services. The Australian Institute of Health and Welfare report that "the average daily turn-away rate for agencies targeted at women escaping domestic violence was 48% - that is, around 1 in 2 women who approached these agencies were unable to obtain immediate accommodation on an average day."<sup>98</sup>

2030 Advocates identified a range of concerns with the SAAP response to women escaping domestic or family violence:

- concerns that the primary government response to domestic or family violence is constructed as an issue of homelessness
- concerns that the primary government response to domestic or family violence requires women to leave their homes, rather than be supported to stay in their homes with the perpetrator leaving (legislative provisions exist for this in all states/territories, but are not implemented)
- that SAAP programs only address emergency accommodation rather than addressing long-term housing solutions; this is compounded by a shortage of housing for women to exit into (see Article 13)

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- that there is no systemic program to meet the needs of children who enter refuge with their mothers or have lived with domestic violence. A number of DV agencies are developing innovative programs in response to these needs, but greater support is required
- that refuges only meet the needs of a small number of women – predominantly Anglo women living in urban settings. In particular, women from CALD backgrounds, women with disability and Indigenous women are not appropriately supported in the majority of refuges
- the refuge model does not support Indigenous women living in remote or rural communities. It requires them to leave their family and communities, which is oftentimes untenable. Refuge workers note that Indigenous women are more likely to use refuge as a respite, rather than a transitional stage in leaving a violent relationship

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*We recommend that the CEDAW Committee*

- ⇒ Encourage governments to increase funding to shelters and support services to manage the increased demand generated by the *Australia Says No to Violence Against Women* campaign
- ⇒ Encourage governments to provide specialist training of emergency accommodation and domestic violence service workers to meet the service provision and accommodation requirements of women with disability,<sup>99</sup> women from culturally and linguistically diverse communities and Indigenous women
- ⇒ Encourage governments to adopt systemic responses to address needs of children who have lived with domestic violence

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### ***Sexual assault, community attitudes and the criminal justice system***

A range of initiatives have been launched during this reporting period to address inappropriate community attitudes towards sexual assault. For example, in NSW a community education strategy using high-profile sportsmen was introduced to address sexual assault in the "It's Against All the

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<sup>97</sup> Australian Institute of Health and Welfare, "Female SAAP Clients and Children Escaping Domestic and Family Violence 2003-2004," (Canberra: AIHW, 2005).

<sup>98</sup> {Australian Institute of Health and Welfare, 2005 #1075@8}

<sup>99</sup> DVIRC Violence Against Women with Disabilities Project "More than Just a Ramp: A Guide for Women's Refuges to Develop Disability Discrimination Act Action Plans" <http://www.wwda.org.au/cnts.htm>

Rules” campaign. Nonetheless, the level of successful prosecutions for sexual assaults remains appalling low. For example, it is less than 5% in NSW. One regional town in south-western Victoria reported that there had been no convictions in the 24 sexual assault cases conducted over the last three years.<sup>100</sup> Factors contributing to this include an inappropriate legal framework, attitudes of the police, attitudes of prosecutors, attitudes of the judiciary, a reliance on jury trials (they are more likely to acquit the accused), and processes and procedures which militate against successful prosecutions and re-traumatise women.

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*We recommend that the CEDAW Committee*

- ⇒ Call for federal, state and territory governments to work collaboratively to address the legal, policy, attitudinal and social support barriers to prosecution of sexual assault
- ⇒ Encourage federal and state governments to undertake comprehensive training across jurisdictions for the judiciary and legal council on the nature of rape and sexual assault and the mythologies which surround these crimes
- ⇒ Encourage governments to increase support and protection for victims of rape and sexual assault acting as witnesses in trials

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***Sterilisation of women and girls with disability***

The Australian Attorney-Generals have agreed to develop a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors with a decision making disability. While this initiative is to be welcome our consultation with disability groups and women’s groups has demonstrated the need for prohibition against the sterilisation of girls with a decision-making disability except in circumstances where there is a serious threat to life or health. We are concerned that the current process could result in a means to authorise the sterilisation of children with disability despite a lack of serious threat to health or life. In particular, we are concerned that sterilisation of girls with disability could be used as a means of contraception and managing menstruation. In September 2005, following consideration of the Australian Government’s second and third periodic report on the Convention on the Rights of the Child, the Committee on the Rights of the Child adopted the following concluding observation in relation to the sterilisation of children to the Australian Government:

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prohibit the sterilization of children, with or without disabilities, and promote and implement other measures of prevention of unwanted pregnancies, e.g. injection of contraceptives, when appropriate.

Women with Disabilities Australia has released a comprehensive assessment on the issue of sterilisation of women and girls with disability, *Moving Forward: Sterilisation and Reproductive Health of Women and Girls*, which includes constructive recommendations for change.

*We recommend that the CEDAW Committee*

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- ⇒ Assert to the Australian Attorney-Generals that any uniform approach to the sterilisation and reproductive rights of women and girls with disability should prohibit sterilisation of girls with disability under the age of 18 years unless there is a serious threat to life or health, and prohibit sterilisation of women with disability in the absence of informed consent unless there is a serious threat to life or health
- ⇒ Urge the Australian Government to consider the assessment and recommendations provided by Women with Disabilities Australia in their report, *Moving Forward: Sterilisation and Reproductive Health of Women and Girls*

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<sup>100</sup> Personal communication with Sue Moore, Violence Against Women Integrated Services (VAWIS), Warrnambool, VIC.