

NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Australia

July 2009

Prepared by YWCA Australia and Women's Legal Services Australia,
with the endorsement of 135 organisations

This submission to the Committee for the Elimination of All Forms of Discrimination Against Women has been prepared by YWCA Australia and Women's Legal Services Australia, with substantial contributions from other Australian NGOs. This submission is endorsed, in whole or in part, by 135 non-government organisations across Australia.

This Report should be read in conjunction with the Aboriginal and Torres Strait Islander Women's CEDAW NGO Report, which was prepared in parallel to this document.



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Endorsements

This Report is endorsed, in whole or in part, by the following non-government organisations:

Aboriginal Disability Network	Council of Social Service of NSW (NCOSS)
Aboriginal Legal Rights Movement	Darwin Community Legal Service
Advocacy for Inclusion	Darwin Domestic Violence Counselling Service
African Women's Advocacy Unit	Disability Discrimination Legal Centre NSW
AIDS Council of South Australia	Domestic Violence Legal Workers' Network
Anti-Slavery Project, University of Technology, Sydney	Domestic Violence Prevention Centre Gold Coast Inc
Armadale Domestic Violence Intervention Project Inc	Domestic Violence Victoria
Asylum Seeker Resource Centre	East and Central African Communities of Victoria (EACACOV)
Australian Baha'i Community	Eastern Domestic Violence Service Inc (EDVOS)
Australian Bosnian Cultural Association	Federation of Community Legal Centres (Victoria)
Australian Church Women	Gender Consortium, Flinders University
Australian Council for International Development	Girl Guides Australia Ltd
Australian Federation of Disability Organisations	Gold Coast Centre Against Sexual Violence
Australian Federation of Medical Women	Gosnell Community Legal Centre Inc
Australian Federation of University Women (AFUW Inc)	Hawkesbury Nepean Community Legal Centre
Australian Federation of University Women (NT)	Hindu Women's Council of Australia
Australian Lawyers for Human Rights	Hobart Women's Health Centre
Australian Women Lawyers	Human Rights Law Resource Centre
Australian Women's Health Network	Immigrant Women's Support Service
BPW Australia (Business & Professional Women Australia)	Inner City Legal Centre
Broome Family Violence Prevention Legal Service	Intellectual Disability Rights Service
Canberra Rape Crisis Centre	International Women's Development Agency
Central Coast Community Legal Centre	JERA International
Central West Women's Health Centre Inc	Kingsford Legal Centre, University of New South Wales
Centre Against Sexual Violence	Koorie Women Mean Business Incorporated
Children by Choice	League of Women Voters of Victoria
Community Legal Centres NSW	Liberty Victoria
Conflict Resolving Women's Network Australia Inc	Lilla: International Women's Network (Edmund Rice Centre)

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Monash Student Association	Queensland Council of Social Service
Moreland Community Legal Centre	Queensland Women's Health Network Inc
Murdoch University Women's Collective	Reclaiming Voices Inc
Muslim Women's National Network of Australia Inc	Salvation Army
National Association of Community Legal Centres	Scarlet Alliance, Australian Sex Workers Association
National Association of Services Against Sexual Violence (NASASV)	Security 4 Women
National Coalition of Mothers Against Child Abuse	Sisters Inside Inc
National Council of Jewish Women of Australia Ltd	Soroptimist International
National Council of Women of Australia	Southern Communities Advocacy Legal and Education Service Inc (SCALES)
National Ethnic Disability Alliance	Starick Services Inc
National Federation of Australian Women	The Benevolent Society
National Rural Women's Coalition	The Lucy Saw Centre
National Union of Students Women's Department	Top End Women's Legal Service
Network of Immigrant and Refugee Women of Australia Inc	UNAA Status of Women Network
No To Violence Male Family Violence Prevention Association	UNIFEM Australia
Northern Rivers Community Legal Centre	Victorian Aboriginal Legal Service Co-operative Limited
NSW Rape Crisis Centre	Victorian Immigrant and Refugee Women's Coalition
NSW Women's Refuge Movement Working Party Inc	Victorian Women and Mental Health Network
NT Working Women's Centre	Victorian Women's Trust
Older Women's Network (Australia)	VIEW Clubs of Australia
Older Women's Network (NSW)	VOCAL (Victims of Crime Assistance League Inc NSW)
Pan Pacific and South East Asia Women's Association	Wagga Women's Health Centre
People With Disabilities (WA) Inc	Women in Adult and Vocational Education (WAVE)
People With Disability Australia Incorporated	Women in Adult and Vocational Education (Qld)
PILCH Homeless Persons' Legal Clinic	Western NSW Community Legal Centre Inc
Positive Women Victoria	WIRE Women's Information
Project Respect	Wirringa Baiya Aboriginal Women's Legal Centre
Public Interest Advocacy Centre	Women With Disabilities Australia
Public Interest Law Clearing House (Vic) Inc	Women With Disabilities WA Inc

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Women's Centre for Health Matters	Women's Legal Service Victoria
Women's Council for Domestic and Family Violence Services (WA)	Women's Legal Services Australia
Women's Electoral Lobby Australia	Women's Legal Services NSW
Women's Health Grampians	Women's Rights Action Network Australia
Women's Health Queensland Wide Inc	Working Women's Centre SA Inc
Women's Health Services Alliance (Qld)	World Vision Australia
Women's Health Victoria	YWCA Australia
Women's International League for Peace and Freedom (Australian Section)	Zonta Club of Adelaide Inc
Women's Law Centre of Western Australia	Zonta International District 23
Women's Legal Centre (ACT & Region) Incorporated	Zonta International District 24
Women's Legal Service Tasmania	

List of Recommendations – Australian NGO Report

Articles 1 – 3: Definition of discrimination against women, obligations to eliminate discrimination against women and advancement of women

- 1 THAT the Australian Government be congratulated for ratifying the Optional Protocol to CEDAW and other international human rights instruments.
- 2 THAT the Victorian and Australian Capital Territory governments be commended on their human rights legislation.
- 3 THAT the Australian Government be commended on initiating an independent review of its human rights protections.
- 4 THAT all Australian governments develop Human Rights Acts that make explicit reference to CEDAW and substantive equality for women, that guarantee rights equally to women and men in Australia, and that provide economic, social and cultural rights with the same level of protection as civil and political rights.
- 5 THAT the Australian Government embarks on incorporating guarantees to equality and non-discrimination in the Australian Constitution.
- 6 THAT the Australian Government implement the recommendations of the Senate Legal and Constitutional Affairs Committee on reform of the *Sex Discrimination Act*, including the issue of enacting an Equality Act to provide a comprehensive regime to promote equality and address all grounds of discrimination.
- 7 THAT State and Territory governments review their anti-discrimination laws and frameworks in light of the Senate Committee's recommendations.
- 8 THAT the Australian Government adopt laws and policies which provide comprehensive protection of the right to equality and non-discrimination, including measures which:
 - provide a legal right to substantive equality and adequately address systemic discrimination;
 - allows for both representative and individual complaints;
 - address compounded or intersectional discrimination;
 - prohibit discrimination, harassment and vilification as well as ensuring equality;
 - allows for temporary special measures and general conditions to promote equal opportunity; and
 - do not allow for permanent exceptions to the functioning of the laws, for example for religious or voluntary bodies.
- 9 THAT the Australian Government be commended for the establishment of an online portal on anti-discrimination laws and commissions.
- 10 THAT the Australian Government ensure that the Australian Human Rights Commission and its business units are provided with adequate funding to properly discharge their functions.
- 11 THAT State and Territory governments, and relevant statutory authorities, examine allegations of discrimination in the prison system and introduce the necessary reforms to eliminate discriminatory practices.
- 12 THAT the Australian Government ensure that all States and Territories implement consistent policies addressing the needs of incarcerated mothers where they have dependent

children, in particular by considering alternative sentencing options such as the suitability of home detention, periodic detention or community-based orders.

- 13 THAT all Australian governments enact comprehensive legislation prohibiting discrimination on the basis of sexual orientation or gender identity.
- 14 THAT all Australian governments remove exemptions in their anti-discrimination framework which discriminate against lesbian, gay, bi-sexual, intersex, trans-sexual and transgender people
- 15 THAT the Australian Government formally respond to the House of Representatives Standing Committee on Legal and Constitutional Affairs' report, *Older people and the law*, and implement its recommendations, including for the purpose of improving the protection of older women from social and economic marginalisation and abuse.
- 16 THAT the Australian Government provide the necessary resources to the Office for Women and various collection and reporting agencies (particularly the Australian Bureau of Statistics) to improve the public availability of gender disaggregated data (in terms of access, analysis and reporting).
- 17 THAT the Australian Government take measures to strengthen their response to the 2006 Concluding Comments in relation to conducting regular analysis of legal and policy measures taken towards the practical realisation of equality, including through the use of disaggregated data in supporting such analysis.

Article 4: Temporary Special Measures

- 18 THAT the review of the Equal Opportunity for Women in the Workplace Act be welcomed, and that the Australian Government provide information on implementation, and clarify whether all CEDAW obligations have been implemented in the course of the review.
- 19 THAT all Australian governments adopt an ACT-style quota system for improving female representation on government-controlled boards.
- 20 THAT all Australian governments adopt a range of supportive measures to improve women's board participation – such as targeted board skills training and subsidised child care, until such time as measurable participation targets have been met.
- 21 THAT the Australian Government use financial incentives (eg tax concessions) and other legislative measures to encourage improved female board representation in public organisations and public companies.

Article 5: Sex roles and stereotyping

- 22 THAT the Australian Government proactively address cultural gender stereotypes that militate against male participation in child-rearing and reinforce the feminisation of care.
- 23 THAT the Australian Government ensure that the National Women's Health Policy currently being developed makes it a priority to identify gendered stereotypes about health policy, and conducts gender analysis of all major investments and programs in health policy.
- 24 THAT the Australian Government's intention to develop a National Strategy on Body Image be commended, and that the countering of negative body image stereotypes be adopted as a key rationale for this Strategy.

- 25 THAT the adoption of a National Media and Industry Code of Conduct that applies across different forms of media, and other commercial incentives for promoting positive body image be encouraged.
- 26 THAT the Australian Government provide financial support for initiatives that increase the quantity and quality of media coverage for women's sport.
- 27 THAT research to replicate and extend the media study commissioned by the Australian Sports Commission in 1996 be conducted and the results of the proposed study be widely disseminated.
- 28 THAT the Australian Government lead the implementation of the recommendations of the UN Division for the Advancement of Women publication Women 2000 and beyond: Women, gender equality and sport regarding media coverage of women's sport.

Article 6: Suppression of the exploitation of women

- 29 THAT the Australian Government be commended for boosting the funding for the anti-trafficking Action Plan and for the work of key anti-trafficking NGOs, for its ongoing commitment to victim support programs, and for the support given to the Roundtable process.
- 30 THAT the Australian Government be commended for the significant reforms to the trafficking visa regime and access to the Trafficking Support Program, especially to the extent that reforms address long-standing humanitarian concerns about the regime's treatment of trafficking victims.
- 31 THAT the Australian Government be encouraged to use a human rights framework in updating the Action Plan as its comprehensive response to trafficking, and to move away from a predominantly transnational criminal justice framework.
- 32 THAT the revisions of the visa regime and eligibility to the support program be reviewed after a year of operation to assess whether or not the Australian Government is sufficiently supporting all victims of trafficking, transparency in the way trafficking visas are allocated and revoked, and achievement of its stated protection and prevention objectives and outcomes.
- 33 THAT the Australian Government be encouraged to explore legal reform so that compensation is more available to victims of trafficking.
- 34 THAT the Australian Government initiate an independent, comprehensive review of all repatriation programs.
- 35 THAT State and Territory governments be commended for providing funding to a range of organisations that make specialist support available to women in the sex industry, and are encouraged to make this funding ongoing.

Article 7: Public participation

- 36 THAT the positive developments in increased women's representation in senior public office and in the Australian Parliament be welcomed, and the Australian Government be encouraged to consider ways that the increased profile of women in public office can be consolidated and improved.

- 37 THAT the Australian Government commit to ongoing funding for a national women's consultative structure (whether this continues to be the Women's Alliances or an improved model resulting from the current review), and to strengthening this model by supporting the development of a formal structure to facilitate the advocacy and policy input of Aboriginal and Torres Strait Islander women and women from migrant and refugee backgrounds.
- 38 THAT all Australian governments (including local governments) build universal access principles into all aspects of election and voting policy and practice.
- 39 THAT all Australian governments 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.
- 40 THAT all Australian governments reject the recommendation made by the Australian Parliament's Joint Committee on Electoral Matters to end the trial of electronically assisted voting; and to continue to provide access to secret and independent voting through this means.

Article 8: International Participation

- 41 THAT the Australian Government's review of the AusAID Family Planning Guidelines be welcomed.
- 42 THAT the Australian Government be congratulated for its revitalised role in international women's policy forums, and their commitment to integrating gender in overseas development assistance.
- 43 THAT the Australian Government be congratulated on its collaborative work with NGOs to design options for the implementation of UN Security Council Resolution 1325, and is requested to regularly report on implementation of Resolution 1325 (particularly on gender training of troops and peacekeepers).
- 44 THAT the Australian Government continue to pursue a 0.7% target for overseas aid funding, rather than the current 0.5% threshold currently under consideration.
- 45 THAT the Australian Government, whilst maintaining its policy of gender mainstreaming in international aid, significantly increase the percentage of the annual aid budget allocated to 'direct expenditure' gender equity activities.
- 46 THAT the Australian Government adopt a gender-sensitive reporting procedure so that the types of programs funded by the 'indirect expenditure' category of spending on gender equality, and the extent to which they result in actual integration of gender equity measures into program process and outcomes, is transparent.
- 47 THAT AusAID policy strengthen its approach to gender mainstreaming through adopting process-oriented indicators by which programs are evaluated, together with outcomes-focused indicators.

Article 9: Nationality

- 48 THAT the Australian Government be commended on its changes to the refugee and asylum seeker processing and accountability system, as well as its abolition of the Temporary Protection Visa regime and commitment to expediently process all current holders of a Temporary Protection or Temporary Humanitarian Visa.

- 49 THAT the Australian Government be commended on its proposal to abolish the ‘45 day rule’ and to implement work rights reform for asylum seekers.
- 50 THAT the Australian Government abolish all mandatory detention of asylum seekers.
- 51 THAT the Australian Government investigate the impact of immigration detention on women and address gender-based issues in its standards, protocols, training and procedures.
- 52 THAT the Australian Government facilitate a detailed analysis of refugee claims of women in Australia and make disaggregated data on women’s applications for protection visas publicly available, in order to heighten government accountability and to inform appropriate policy and provision of services for women seeking asylum.
- 53 THAT the application processes for women seeking asylum as part of a family unit be improved so that women seeking asylum are receiving equality before the law and are able to make their own claims, where appropriate.
- 54 THAT the Australian Government improve refugee processing procedures so that claims of family violence can be easily made without having to rely solely on Ministerial intervention.
- 55 THAT the Australian Government amend the Migration Act to enable women invoking our protection obligations to be considered individually in situations of family violence, as in the provisions for the partner migration process; otherwise, THAT the Ministerial Guidelines which guide decision making under section 417 incorporate a broader approach to the issue of gender-based violence.
- 56 THAT the Australian Government improve and fund education initiatives targeting refugee women about their right to protection from violence and the redress mechanisms available to them as part of a policy of continued support for post-arrival orientation services (discussed in the Australian Government Report at paragraphs 7.15-7.17).
- 57 THAT the Australian Government amend the Migration Act to eliminate indirect discrimination against women applicants for protection, and to incorporate women’s gender based harm into the refugee definition (in particular, the incorporation of gender-based violence within the definition of ‘serious harm’, and providing an inclusive, non-exhaustive definition of ‘membership of a particular social group’).
- 58 THAT the Australian Government update its Gender Guidelines to reflect best practice in handling the claims of refugee women, and ensure that the immigration Minister, his or her delegates and department, and the Migration and Refugee Review Tribunals are mandatorily bound to determine claims and frame policy in accordance with the Gender Guidelines.
- 59 THAT the Australian Government amend protection claim procedures so that once a valid claim has been established, dependant family members of refugees are brought to Australia as soon as possible, with any necessary further visa processing carried out onshore in Australia.
- 60 THAT the Australian Government consider expanding its definition of ‘immediate family member’ in the offshore humanitarian split family provisions.

Article 10: Education

- 61 THAT the Australian Government be commended for introducing the proposed amendments to the Higher Education legislation which require the provision of some level of student support services on campus in consultation with students.

- 62 THAT the Australian Government ensure that student organisations (where they exist) have direct control of the capped general services and amenities fee.
- 63 THAT the Australian Government carefully monitor and review the impact of these changes to ensure that the services provided will sufficiently cater for the needs of female students, particularly women from diverse or disadvantaged backgrounds and single mothers.
- 64 THAT the Australian Government take action to address the long-term gender-differentiated impact of Higher Education Loan Program debts.
- 65 THAT the Australian Government consider budgetary and policy mechanisms to reduce the structural financial pressures of study for female students, including through targeted, flexible, low-interest loan schemes.
- 66 THAT the Australian Government and State and Territory governments update and implement a national vocational education and training policy for women formulated around women-centred principles – in particular, gender equity and inclusiveness – as well as quantifiable key performance indicators and targeted interventions for disadvantaged groups of women, and associated employment outcomes, as a matter of urgency.
- 67 THAT a national vocational education and training policy for women with associated strategies be instated no later than 2010, and prior to the expiry date of the current policy Women: Shaping Our Future.
- 68 THAT the Australian Government work to improve the analysis and reporting of publicly accessible gender-disaggregated data on the performance of the national vocational education and training system as a matter of urgency.
- 69 THAT the National Vocational and Education Training Equity Advisory Council include an active and specific focus on women and girls in its mandate and core business, and report on the same.
- 70 THAT the Australian Government monitor and evaluate the impact of fees for vocational and education training courses, especially those offered through Technical and Further Education, with due consideration to the impact of such fees on women and girls.
- 71 THAT the Australian Government consider budgetary and policy mechanisms to reduce the structural financial pressures of vocational and education training studies.

Article 11: Work

- 72 THAT the Australian Government be congratulated on the introduction of a Government-funded paid parental leave scheme effective from January 2011.
- 73 THAT the Committee seeks assurances from the Australian Government that the paid parental leave scheme will be available for all families, including same-sex families.
- 74 THAT the Australian Government be encouraged to introduce employer superannuation contributions and paid paternity leave, as per the Productivity Commission recommendations, after the three year review of the paid parental leave scheme's implementation.
- 75 THAT the Australian Government formally remove its reservation on maternity leave in light of the introduction of the paid parental leave scheme.

- 76 THAT the Australian Government be congratulated on the review of the Australian taxation system and for funding women’s NGOs to ensure that the discriminatory components of the current system have been identified.
- 77 THAT the Australian Government ensure that reforms to the Australian taxation system address the elements of the current system that are discriminatory in their impact on women’s income.
- 78 THAT the Australian Government be commended for establishing a new industrial relations system in which individual statutory contracts are phased out and unfair dismissal rights and minimum standards of employment are strengthened, which will somewhat mitigate the marginalisation of female employees.
- 79 THAT the Australian Government be commended for establishing a range of inquiries into the ongoing pay inequity between women and men in Australia.
- 80 THAT the Australian Government address the findings of such inquiries.
- 81 THAT in its review of the Equal Opportunity for Women in the Workplace Agency, the Australian Government expand the scope of the Equal Opportunity for Women in the Workplace Agency’s mandate to include organisations of less than 100 employees.
- 82 THAT all Australian governments follow the Queensland Government’s lead and increase funding to the community service sector so that award rates can be comparable to those in the public sector.
- 83 THAT the Australian Government address the gendered disparity in retirement incomes through reforming the Aged Pension and adopting other measures proposed by the National Foundation for Australian Women in its submission to the Inquiry into Australia’s Future Tax System.
- 84 THAT the Australian Government strengthen the right to flexible working conditions in the Fair Work Act and National Employment Standards.
- 85 THAT the Australian Government formally reviews the gender-based impact of the Fair Work Act on female workers, particularly:
- whether there are increased or decreased rates of part-time and casual work, the nature of workers’ benefits and the impact on workers with family responsibilities; and
 - the impact of the changes on women with disability, Aboriginal and Torres Strait Islander women, women from Non-English Speaking Backgrounds and sole parents.
- 86 THAT the Australian Government ensure equal protection to women employees against unfair dismissal, regardless of the size of their employer.
- 87 THAT the Australian Government commission specific research into the gender dimensions of work and family responsibility for people with disability, and use this research to inform the current progress towards its National Disability Strategy.
- 88 THAT all Australian governments adopt initiatives to increase employment participation of women with disability and to address the underlying structural barriers to their workforce participation.
- 89 THAT the Australian Government be congratulated for the pilot employment program, and be encouraged to provide long-term funding to the pilot employment program if the outcomes of the trial are positive, and to address through additional programs the structural barriers facing women with disability gaining employment.

- 90 THAT all Australian governments and other relevant public and private authorities fully implement the recommendations contained in the October 2008 report of the Australian Human Rights Commission, *Sexual Harassment: Serious Business*.
- 91 THAT women’s employment legal services be funded to educate the community and conduct advocacy on the issue of sexual harassment in the workplace.
- 92 THAT the South Australian Government decriminalise sex work.
- 93 THAT the Victorian and Queensland governments repeal mandatory health tests of sex workers.

Article 12: Health

- 94 THAT the Australian Government be commended for its commitment to a new National Women’s Health Strategy.
- 95 THAT all Australian governments ensure that women-specific health indicators such as those that were in the Public Health Outcomes Funding Agreements be maintained under the current funding arrangements.
- 96 THAT the continued funding of stand-alone women’s health services be welcomed as a great achievement.
- 97 THAT all Australian governments reinstate the requirement that State and Territory governments provide for women’s reproductive and sexual health services.
- 98 THAT the decriminalisation of abortion in Victoria be welcomed.
- 99 THAT all State and Territory governments decriminalise abortion, and move to adopt harmonious laws related to termination of pregnancy across jurisdictions.
- 100 THAT the Australian Government increase funding for termination of pregnancy, to address the growing gap between the Medicare Rebate and the cost of service provision, including through increasing the level of rebate available through the Medicare system.
- 101 THAT all Australian governments examine schemes to address the barriers to access of sexual health services and education faced by women in rural, regional and remote areas.
- 102 THAT the Australian Government liaise with State and Territory governments to increase access to RU 486 and take positive steps to support its sale in Australia.
- 103 THAT the steps taken by the Australian Government to address the increases in Sexually transmitted infections in Australia be welcomed.
- 104 THAT the Australian Government introduce a National Sexual and Reproductive Health Strategy, including a national curriculum on sexual health, and better training of general practitioners and health professionals in the provision of youth-based sexual health services.
- 105 THAT the Australian Government be encouraged to design a system of mental health infrastructure that is gender-sensitive in consultation with women’s health services and specialists.
- 106 THAT the Australian Government particularly adopt the recommendations of the Senate Standing Committee on Community Affairs that relate to women’s mental health concerns.
- 107 THAT the risks to health and safety of women in psychiatric wards due to current State Government policy is concerning.

- 108 THAT the Australian Government amend the national guidelines governing hospital design to ensure choice between mixed and single-sex treatment environments.
- 109 THAT the Australian Government acknowledge that Australia’s system of universal health insurance is integral to supporting women’s realisation of their substantive right to access health care, and ensure that the ongoing political and fiscal commitment to Medicare is gender-sensitive in application and effect.
- 110 THAT all Australian governments 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.
- 111 THAT all Australian governments 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.
- 112 THAT all Australian governments advocate for the inclusion of women with disability in generic health research.
- 113 THAT all Australian 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.
- 114 THAT State and Territory governments change funding formulas for language service provision in the health sector and cultural sensitivity training for health care professionals to better reflect the community need.
- 115 THAT State and Territory governments fund research on client perception of language barriers and culturally appropriate health service provision.
- 116 THAT all Australian governments implement constructive policy frameworks (for example, policies such as the Victorian Language Services Policy), and ensure that such frameworks are adequately funded.
- 117 THAT the Australian Government ensure that women working in Australia on Temporary Business (Long Stay) visas can access some form of subsidised health care.
- 118 THAT the Australian Government be congratulated for removing discriminatory provisions from national health legislation.
- 119 THAT the Australian Government ensure that the National Women’s Health Policy is sensitive to the particular health needs and risks of lesbians.
- 120 THAT State and Territory governments fund and implement programs particularly directed at the particular health needs and risks of lesbians.

Article 13: Economic and social rights

- 121 THAT the Australian Government’s increased funding for childcare places and child care support be welcomed.
- 122 THAT the Australian Government develop a comprehensive childcare policy to include out of school hours and vacation care.

- 123 THAT the Australian Government refer the development of a more transparent and equitable approach to financing childcare to the Productivity Commission for review.
- 124 THAT the introduction of utilities relief schemes in some Australian jurisdictions be welcomed.
- 125 THAT State and Territory governments expand the utility relief schemes so that they are available to sole parents.
- 126 THAT the Australian Government be commended for the significant boost to various pension payments, and the introduction of the Carer Supplement.
- 127 THAT the Australian Government be congratulated for the welcome changes to, and increased flexibility in, the application of workforce participation requirements for principal carer parents.
- 128 THAT the Australian Government be commended on addressing homelessness as a national priority.
- 129 THAT the Australian Government adopt a human rights based approach to housing and homelessness policies and programs.
- 130 THAT the Australian Government urgently address the exclusion of sole parents and single mothers from participation in socio-economic life, including through increasing the Parenting Payment (Single) in line with other pension increases announced in the 2009-10 Australian Government Budget.
- 131 THAT the Australian Government responds to the disparity in patterns of use of Commonwealth State/Territory Disability Agreement-funded services between women and men with disability.
- 132 THAT the Australian Government analyse the impact of its 2009-10 Budget decision to not increase the Parenting Payment benefit for women carers with disability or women with disability caring for children with disability.
- 133 THAT the Australian Government develop and adopt a national code for universal housing design.
- 134 THAT the Australian Government modify the Disability Standards for Access to Premises to create maximum access to the built environment, and ensure that provisions for exemptions do not undermine the purpose of the Disability Discrimination Act.
- 135 THAT the Australian Government use targets for women's representation on National Sport Organisations that steadily increase over time, and are linked to funding.
- 136 THAT the Australian Government systematically collect key indicators (statistics) on gender distribution in sport governance to monitor and evaluate the impact of initiatives.
- 137 THAT the Australian Government fund research into the effectiveness of women's participation on National Sport Organisation boards for representing women's interests in shaping policy, resource allocation and program development.
- 138 THAT the Australian Government comprehensively respond to the Senate Report (About time! Women in sport and recreation in Australia) and the Network of Immigrant and Refugee Women Australia Report.
- 139 THAT the Australian Government allocate equal funds to promoting, supporting and assisting women's and men's sport.

- 140 THAT State and Territory governments review de facto and de jure discriminatory practices in the public housing programs.
- 141 THAT State and Territory governments develop community education programs to address discriminatory practices in the private rental markets.
- 142 THAT all Australian governments commit to increase funding, access and availability to various forms of supported housing and accommodation, particularly housing which meets the needs of women with disability, women experiencing mental illness and older women.
- 143 THAT State and Territory governments examine de facto discrimination in the banking sector and take steps to rectify such discrimination.

Article 14: Rural women

- 144 THAT the Australian Government's commitment to a stronger national rural women's network and to building women's leadership capacities in rural and regional areas be commended.
- 145 THAT State and Territory governments conduct the comprehensive research required to address the gendered impacts of pre-payment meters and the ongoing impact of the privatisation of utility services.
- 146 THAT State and Territory governments introduce adequate reforms where pre-payment meters are beyond the scope of the current consumer protection frameworks.
- 147 THAT the Australian Government adopt the recommendations of the National Rural Women's Coalition's reports on health services and infrastructure in regional and remote communities, which called for appropriate funding of health services in rural communities based on a collaborative, community-based approach to modeling services to meet communities' needs.
- 148 THAT the Australian Government focus its rural health policy on increasing bulk-billing rates in rural, regional and remote areas of Australia, and in the ACT and Northern Territory.
- 149 THAT the Australian Government urgently address the crisis in maternity care services, particularly with regard to expanding midwifery training programs.
- 150 THAT the Australian Government develop strategies to attract medical specialists and healthcare workers to relocate and settle in regional and rural areas.

Article 15: Equality before the Law

- 151 THAT Australian Government be commended for funding community legal centres and legal aid, and that the important work these services do in advancing women's access to justice be acknowledged.
- 152 THAT the Australian Government increase ongoing funding to community legal centres and legal aid.
- 153 THAT the Australian Government redress the gender inequity in provision of legal aid services.
- 154 THAT the Australian Government be asked to clarify what steps have been taken to implement access to justice inquiry reports.

- 155 THAT the Australian Government implement the 2004 and 2009 Access to Justice Inquiry reports.
- 156 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 and to ensure their needs are met, which includes data collection, analysis and reporting, community support and care programs, legal support and assistance, diversionary programs and community based sentencing options.

Article 16: Equality in Family Relations

- 157 THAT the Australian Government be commended for providing separating de facto couples access to the Federal family law courts for disputes about property.
- 158 THAT the Australian Government be commended for removing discrimination against same-sex couples in relation to financial and work-related benefits and entitlements.
- 159 THAT the Australian Government introduce a clause to guarantee that lesbians receiving social security benefits do not lose their existing entitlements, or introduce a lengthier adjustment time to allow women to rearrange their finances.
- 160 THAT the Family Court of Australia's Family Violence Best Practice Principles be welcomed.
- 161 THAT the Australian Government repeal the false allegations provision in the Family Law Act as a matter of priority.
- 162 THAT the Australian Government amend the Family Law Act to better protect the safety of children and mothers.
- 163 THAT the Australian Government review the child support formula and its impact on women, who are generally the primary carers of children.
- 164 THAT the Australian Government be commended on the steps taken to reduce child support debt and fraud, and that it continue to monitor child support debt and take further steps to reduce the \$1 billion in uncollected child support debt.
- 165 THAT the Australian Government commit to working with State and Territory governments towards a nationally consistent approach to relationship recognition, in particular one that includes same-sex and mixed-sex couples, on terms of equality.
- 166 THAT the Australian Government commit to working with State and Territory governments to eliminate discrimination against lesbian couples in relation to adoption.
- 167 THAT all Australian governments implement comprehensive and intensive parenting and family support services for parents with disability to assist with maintaining children with their parents and within their own family homes.
- 168 THAT the Australian Government commit to working with State and Territory governments to establish, and recurrently fund a National Resource Centre for Parents with Disabilities, focusing on pregnancy & birthing, adoption, custody, assisted reproduction, adaptive baby care equipment, as well as general parenting issues.
- 169 THAT the Australian Government commit to working with State and Territory governments to act immediately to investigate and address the barriers to reproductive autonomy and procreative choice for women with disability.

Violence Against Women

- 170 THAT initiatives from the Australian, State and Territory governments be welcomed, but authorities be reminded 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.
- 171 THAT the Australian Government be commended on the creation of a National Council and Plan to Reduce Violence Against Women and Children, the delivery of its Time for Action report, and its commitment to implement most of the priority recommendations in the National Plan.
- 172 THAT the Australian Government implement the remainder of the action plan as a matter of priority.
- 173 THAT the Australian Government work with the State and Territory governments to fund the action plan on violence against women adequately and in a sustained way to reflect the extent of the problem and to bring Australian per capita funding, at a minimum, up to the average set by the Council of Europe.
- 174 THAT the Australian Government ensure the action plan on violence against women includes the provision of comprehensive, accessible services, especially by increasing funding to women's non-government organisations that have expertise in assisting women who have experienced violence.
- 175 THAT the Australian Government ensure that the action plan on violence against women includes increased funding to women's non-government advocacy organisations that work to make women's right to be free of violence a reality.
- 176 THAT the Australian Government include within the action plan on violence against women the further development of legal responses, including enforcement and remedies, which are nationally consistent and recognise violence against women as a human rights violation.
- 177 THAT the Australian Government include in the action plan on violence against women clear targets, benchmarks and timeframes against which the results of the plan can be evaluated, and which can be used to review it.
- 178 THAT the Australian Government be commended for its formal recognition of the links between homelessness and family violence and the steps taken to address this.
- 179 THAT in addition to addressing the underlying causes of domestic or family violence the Australian Government increase funding to shelters and support services that are appropriate to women fleeing situations of domestic or family violence.
- 180 THAT all Australian governments are encouraged to adopt systemic responses to address needs of children who have lived with family violence.
- 181 THAT all Australian governments implement measures to assist women escaping domestic or family violence to stay in their homes with the perpetrator leaving.
- 182 THAT community organisations, White Ribbon Ambassadors and the Australian Government be commended for their work in developing and funding the White Ribbon Campaign.
- 183 THAT the Victorian Government's work in the area of violence against women be welcomed and commended to other State and Territory governments.

- 184 THAT all Australian governments work collaboratively to address the legal, policy, attitudinal and social support barriers to prosecution of sexual assault.
- 185 THAT all Australian governments undertake comprehensive training across jurisdictions for the judiciary and legal counsel on the nature of rape and sexual assault and the mythologies which surround these crimes.
- 186 THAT all Australian governments increase support and protection for victims of rape and sexual assault acting as witnesses in trials, including through strengthening laws, policies and funding to protect the confidentiality of victims' counselling records.
- 187 THAT the Australian Government consider ways to ensure better integration across the child protection, family violence and family law jurisdictions.
- 188 THAT the Australian Government work with State and Territory governments to implement family violence homicide reviews.
- 189 THAT the Australian Government address, as a priority, the abuse and violence of women with disability living in institutions.
- 190 THAT the Australian Government integrate the abuse and violence against women with disability living in supported accommodation into the family violence context.
- 191 THAT the Australian Government advocate for the inclusion of women with disability in support services assisting with the recovery of abuse and violence, and ensure such services are available, accessible and appropriate.
- 192 THAT the Australian Government make it an offence to:
- perform non-therapeutic sterilisation of a child under the age of 18 years unless there is a serious threat to life or health;
 - perform non-therapeutic sterilisation of adults with disability in the absence of informed consent unless there is a serious threat to life or health; and
 - procure, or seek to procure, such a procedure, and to assist or aid and abet in such a procedure.
- 193 THAT the Australian Government take steps to increase access to family violence and sexual assaults services for women in rural and remote areas.
- 194 THAT the Australian Government intensify its efforts to eliminate violence against women in the realm of sport.
- 195 THAT the Northern Territory Government remove the obligation on health professionals for mandatory reporting of domestic and family violence to the police.

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- Human Rights Law Resource Centre, Kingsford Legal Centre & National Association of Community Legal Centres, *Freedom, Respect, Equality, Dignity: Action – NGO Submission to the UN Committee on Economic, Social and Cultural Rights* (April 2008) and *Addendum* (May 2009);
- Australian Human Rights Commission, *Review of Australia's Fourth Periodic Report on the Implementation of the International Covenant on Economic Social and Cultural Rights – Submission to the United Nations Committee on Economic, Social and Cultural Rights* (17 April 2009);
- Human Rights Law Resource Centre, Kingsford Legal Centre & National Association of Community Legal Centres, *Freedom, Respect, Equality, Dignity: Action - NGO Submission to Human Rights Committee* (September 2008) and *Addendum* (March 2009);
- WomenSpeak member organisations and other organisations and individuals, *Final Submission to the National Human Rights Consultation* (18 May 2009);
- WomenSpeak Alliance, *Collaborative Submission from leading women's organisations and women's equality specialists to the inquiry into the effectiveness of the Sex Discrimination Act* (August 2008);
- Human Rights Law Resource Centre, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Sex Discrimination Act 1984 (Cth)* (August 2008);
- People with Disability, *Response to Striking the Balance – Women, men, work and family* (October 2005); and
- Women's Legal Services Australia, *Submission to the Department of Families, Housing, Community Services and Indigenous Affairs on 'Australia's children: safe and well'* (July 2008).

Methodology

The CEDAW NGO Report Project was conducted under the supervision of the Project Advisory Group, which met quarterly and consisted of representatives from national women's and human rights organisations and peak bodies. Members of the Advisory Group contributed to the Project on a voluntary basis or in addition to already significant workloads being carried for their organisation.

The Project had three key aims:

- hold a national program of workshops and consultations around Australia, to provide an opportunity for a diverse range of women to learn about CEDAW and the CEDAW reporting process and to contribute to national and international policy formation;
- build the capacity of the community sector to use the international human rights treaty reporting system as an advocacy tool – as such, the workshops were targeted at people already working in the community sector, particularly those working in services or advocacy on women's issues;
- produce an NGO Report that reflects the concerns of community sector in relation to women's human rights, and gives voice to the views of Australian women and Australian women's organisations at the United Nations.

Throughout February and until early March 2009, workshops and consultations were held in Sydney, Melbourne, Hobart, Darwin, Alice Springs, Perth, Canberra, Broome, Townsville, Brisbane, Adelaide, Broken Hill and Bourke. An incredible range of women, and some men, benefited from these events.

This Report brings to the United Nations the voices of over 385 women from 17 consultations conducted around Australia in every capital city and in four regional centres. It also provides the voices of thousands of other women who are members of the various NGO contributors to this Report. The Report has also benefited from specialist insight provided by a number of women's and human rights organisations, including welfare, community and social service agencies, during the drafting process.

Aboriginal or Torres Strait Islander women participated in the majority of the state and territory consultations. Specific Aboriginal and Torres Strait Islander women's consultation processes have also been pursued to inform a separate Aboriginal and Torres Strait Islander women's report which has been coordinated by YWCA Australia, Koorie Women Mean Business and the Indigenous Law Centre at the University of New South Wales.

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

- to reflect the diversity of women consulted 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; and
- to recognise that reporting (ideally) occurs within a four-year cycle, and to put forward information and recommendations that reflect anticipated issues for the 2009-2012 period.

This CEDAW NGO Report draws from all the reports and submissions received from individuals and community organisations, 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.

Throughout the CEDAW NGO Report 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 facilitated the distribution of the Australian Government's combined Sixth and Seventh Report on the implementation of CEDAW and its CEDAW Education Kit to workshop participants.

The final step of the reporting process for the NGO sector will be to bring the CEDAW Committee's Concluding Comments home in the second half of 2010, and to use them to achieve change in the next four year period.

Guide to Acronyms used in Australian NGO Report

2006 Concluding Comments	Concluding Comments of the Committee on the Elimination of All Forms of Discrimination against Women on Australia (issued 3 February 2006)	NSW	New South Wales
ACT	Australian Capital Territory	NT	Northern Territory
Australian Government	Federal (national) Australian Government	OECD	Organisation for Economic Cooperation and Development
Australian Government Report	Australia's combined Sixth and Seventh Report on the implementation of CEDAW	PPS	Parenting Payment Single
CALD	Culturally and Linguistically Diverse	Qld	Queensland
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	SA	South Australia
Cth	Commonwealth	Tas	Tasmania
GP	General Practitioner	TPV	Temporary Protection Visa
IVF	In-vitro Fertilisation	UN	United Nations
NESB	Non-English Speaking Background	UNICEF	United Nations Children's Fund
NGO	Non-Government Organisations	VET	Vocational education and training
		Vic	Victoria
		WA	Western Australia
		YWCA	Young Women's Christian Association

Notes on terminology for reading this Report

Australian government jurisdictions

In Australia, some issues covered by this Report fall within the decision-making jurisdiction of State and Territory governments. Accordingly, we have directed the Recommendations in this Report to those governments which bear responsibility for those issues.

Family Violence and Domestic Violence

In Australia both ‘family violence’ and ‘domestic violence’ is used – in legislation, policy and service provision – to describe violence against women. There is no single legal definition for either of these terms but they are often defined by reference to contextual elements such as relationships, location or domestic arrangements. Both terms have been used in this report when discussing violence against women.

Culturally and Linguistically Diverse (CALD) / Non-English Speaking Background (NESB) / Immigrant / Migrant Women

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 ‘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

For information on Articles 1 – 3 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women’s Report.

POSITIVE DEVELOPMENTS

1. Ratification of the Optional Protocol to CEDAW and other international human rights instruments

- 1.1. In November 2008, the Australian Government acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which came into force for Australia in March 2009. The Australian Government is to be congratulated for this significant step, which has been of ongoing concern to the CEDAW Committee.
- 1.2. We also note that the Australian Government ratified the UN *Convention on the Rights of Persons with Disabilities* in 2008, and signed the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* in May 2009. We commend the Australian Government’s statement of support of the General Assembly’s *Declaration on the Rights of Indigenous Peoples*.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be congratulated for ratifying the Optional Protocol to CEDAW and other international human rights instruments.

2. Human rights charters and bills of rights – developments at national and state levels

- 2.1. Coinciding with the 60th anniversary of the adoption of the *Universal Declaration of Human Rights*, the Commonwealth Attorney-General announced a broad-ranging community consultation on whether, and if so how, human rights should be better protected in Australia. The national consultation process was conducted by an independent Consultation Committee appointed by the Attorney-General, with over 38,000 public submissions made by the 15 June 2009 deadline. This is the highest number of submissions ever received for a public inquiry in Australia.
- 2.2. The Consultation Committee has been asked to submit a report to the Australian Government by 30 September 2009 which sets out the means by which the Australian Government can improve the protection and promotion of human rights, the costs and benefits (both social and economic) of the various options and their level of community support.¹

¹ Details are available at National Human Rights Consultation (2008) <<http://www.humanrightsconsultation.gov.au>> at 6 July 2009.

- 2.3. While the terms of reference for the consultation process are broad, it is disappointing that they explicitly rule out consideration of the option of a constitutional ‘bill of rights’ (on the grounds that the Australian Government wishes to preserve ‘parliamentary sovereignty’).²
- 2.4. There is currently no entrenchment of equality in the Australian Constitution. There is also concern among the NGO sector that the outcomes of the consultation need to recognise 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 securing women’s human rights.
- 2.5. At the state and territory level, the ACT Government has enacted the *Human Rights Act 2004* (ACT), and the Victorian Government has enacted the *Victorian Charter of Human Rights and Responsibilities 2006* (Vic) (**Victorian Charter**), both of which adopt a legislative model of human rights protection. Both acts enshrine in legislation the principle of non-discrimination, including for example discrimination on the basis of sex and sexual orientation.³ The Victorian Charter requires the Victorian Equal Opportunity and Human Rights Commission to report on its operation on a yearly basis. Two major four-year reviews of the Victorian Charter are planned: the first must consider the incorporation of additional rights, particularly those contained in CEDAW, the International Convention on Economic, Social and Cultural Rights (**ICESCR**), the Convention on the Rights of the Child and rights of indigenous self-determination. The content and format of the eight-year review has not yet been decided. The ACT Human Rights Act has been reviewed but no new rights were incorporated as a result.
- 2.6. Both the ACT Human Rights Act and the Victorian Charter are predominantly based on the civil and political rights set out in the *International Convention on Civil and Political Rights* (**ICCPR**), and do not meaningfully incorporate the economic, social and cultural rights set out in the ICESCR, which is a serious limitation on the efficacy of both acts in strengthening human rights protection. Reference to the realisation of substantive equality has not been incorporated in the ACT Act’s Statement of Intent nor the Victorian Act’s statement of purpose. 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 state and territory bills of rights.
- 2.7. Western Australia and Tasmania have also considered a human rights charter, however, have not to date enacted any legislation.

CEDAW Committee consideration of the issue

- 2.8. The lack of entrenched constitutional provisions guaranteeing freedom from discrimination on the basis of gender has been addressed in questions of the Committee on the Initial, Second, Third and combined Fourth and Fifth periodic reports. No Concluding Comment specifically addressing this issue has been adopted.
- 2.9. We note that in its Concluding Observations of 22 May 2009, the Committee on Economic, Social and Cultural Rights affirmed the principle of interdependency and indivisibility of human rights, and recommended that Australia enact comprehensive legislation giving effect

² National Human Rights Consultation, Terms of Reference (2008)

<http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms_of_Reference> at 6 July 2009.

³ *Human Rights Act 2004* (ACT) s 8; *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 3, 8.

to economic, social and cultural rights uniformly throughout Australia; consider introducing a Federal charter of rights that includes protection of economic, social and cultural rights; and establish effective judicial remedies for the protection of these rights.⁴

Recommendations proposed for Concluding Comments

- ⇒ THAT the Victorian and Australian Capital Territory governments be commended on their human rights legislation.
- ⇒ THAT the Australian Government be commended on initiating an independent review of its human rights protections.
- ⇒ THAT all Australian governments develop Human Rights Acts that make explicit reference to CEDAW and substantive equality for women, that guarantee rights equally to women and men in Australia, and that provide economic, social and cultural rights with the same level of protection as civil and political rights.
- ⇒ THAT the Australian Government embarks on incorporating guarantees to equality and non-discrimination in the Australian Constitution.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLES 1 – 3

3. Gaps in anti-discrimination mechanisms – national and state levels

3.1. Calls for greater legislative and constitutional protection for equality rights have been made for many years. Some of these include:

- in 1988, the Constitutional Commission recommended a Constitutional amendment guaranteeing freedom from discrimination;⁵
- in 1994, the Australian Law Reform Commission proposed that a legal guarantee of equality be implemented through an Equality Act. Their report also recognised a Constitutional equality guarantee as the ‘ultimate goal’;⁶
- in 2008, the Australian Human Rights Commission (formerly called the Human Rights and Equal Opportunity Commission, or ‘HREOC’) recommended an inquiry ‘which would consider the merits of a comprehensive *Equality Act* for Australia’;⁷ and
- also in 2008, the Senate Committee on Legal and Constitutional Affairs recommended that the Australian Human Rights Commission conduct a public inquiry to examine the merits of replacing the existing federal anti-discrimination acts with a single Equality Act.⁸ The inquiry should report by 2011 and should also consider:
 - what additional grounds of discrimination, such as sexual orientation or gender identity, should be prohibited under Commonwealth law;

⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (22 May 2009) [10], [11].

⁵ Constitutional Commission, *Final Report of the Constitutional Commission: Summary* (1988) 40 <<http://www.ausconstitution.info/ConComm88/start.shtml#memb-com>> at 6 July 2009.

⁶ Australian Law Reform Commission, *Equality before the Law: Justice for Women*, Report No 69 (1994) [4.17].

⁷ HREOC, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry on the inquiry into the effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008) part 17.

⁸ Standing Committee on Legal and Constitutional Affairs, Senate, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008) xvii.

- whether the model for enforcement of anti-discrimination laws should be changed; and
- what additional mechanisms Commonwealth law should adopt in order to most effectively promote equality.

3.2. Despite these calls to action, freedom from discrimination receives inadequate and piecemeal protection under Australian laws.

3.3. The *Sex Discrimination Act 1984* (Cth) fails to provide the legislative framework necessary to properly address direct or systemic discrimination or to promote substantive equality. In general, the Act is limited in the fields of activity that it covers and the types of conduct to which it applies. The individual complaints process – which is that Act’s primary mechanism for responding to discrimination – is not designed to address entrenched discrimination. Furthermore, it places the burden of proving discrimination on individual complainants who are generally vulnerable. The Act therefore fails to fully implement the standards required under CEDAW.⁹ Exemptions from the Act’s operation also exist in relation to religious bodies (including educational institutions established for religious purposes), work in private households, voluntary bodies (which may discriminate on the basis of sex, marital status or pregnancy), sport and combat duties, and specific exemptions which may be granted by the Australian Human Rights Commission for a period of not more than five years. Neither does the Act provide protection on the grounds of sexual orientation or gender identity.

3.4. On 12 December 2008, the Senate Legal and Constitutional Affairs Committee released a report on its review of the Effectiveness of the Sex Discrimination Act 1984 (Cth) in *eliminating discrimination and promoting gender equality in Australia*. The Senate Committee’s review makes 43 recommendations about how better to ensure gender equality in Australia, including recommending changes to the *Sex Discrimination Act*, the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) and the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). By way of overview, the recommendations aimed to:

- improve protection to same-sex couples from discrimination on the basis of marital/relationship status;
- broaden references to international human rights law;
- incorporate provisions for equality before the law and protection from harassment;
- include breastfeeding as a specific ground of discrimination;
- expand the prohibition on discrimination in employment on the grounds of family responsibilities and improve access to flexible work arrangements;
- strengthen protections against sexual harassment;
- improve and boost the powers of judicial bodies to address discrimination complaints;
- refine the availability of exemptions, and remove exemptions for voluntary organisations;

⁹ The Sex Discrimination Act has also been criticised for its limited capacity to address intersectional and compounded discrimination, where the attribute of gender works to further compound discrimination experienced on other grounds, eg race, disability, age: see Simone Cusack, ‘Eliminating All Forms of Discrimination against Women: Combating compounded and systemic forms of discrimination’ (2009) 34(2) *Alternative Law Journal* 86.

- expand and boost the powers of the Australian Human Rights Commission and Sex Discrimination Commissioner to defend, investigate and support discrimination complaints.¹⁰

- 3.5. The review also recommended that a national public inquiry be held to examine the merits of replacing existing federal anti-discrimination laws with a single Equality Act, which would create a comprehensive regime promoting equality and addressing all grounds of discrimination.¹¹ Such an inquiry would provide ‘an opportunity to re-invigorate all of Australia’s anti-discrimination laws and place them at the vanguard of legislative schemes that promote equality’.¹² The inquiry could also assist an analysis of intersectional discrimination – for example, while there have been complaints made jointly under both the Sex Discrimination Act and the Disability Discrimination Act 1992 (Cth), there has been no analysis of whether anti-discrimination laws are generally effective for women with disability in dealing with the intersection between gender and disability.
- 3.6. The Australian Government is currently considering the recommendations of the Senate Committee.
- 3.7. At the state and 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.¹³ The Parliamentary Scrutiny of Acts and Regulations Committee in Victoria is currently reviewing the exemptions and exceptions under the *Equal Opportunity Act 1995* (Vic).
- 3.8. We note that the Australian Government has recently established an online portal designed to be a ‘one stop shop’ for Australians to access information on anti-discrimination laws and commissions in each jurisdiction of Australia.¹⁴ This initiative is part of a move towards national harmonisation of anti-discrimination laws across Australia, and should be commended.

CEDAW Committee consideration of the issue

- 3.9. The 2006 Concluding Comments urged the Australian Government to ensure that all states and territories are in full compliance with the obligations under CEDAW and ‘to take steps to entrench the prohibition of discrimination against women and the principle of equality of women and men’.¹⁵
- 3.10. In their recent Concluding Observations on Australia the Human Rights Committee noted that it ‘remains concerned that the rights to equality and non-discrimination are not

¹⁰ See Standing Committee on Legal and Constitutional Affairs, above n 8.

¹¹ Ibid 43-45, 164-165.

¹² Ibid 165.

¹³ 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, ‘Australian Anti-Discrimination Law and Sexual Orientation: Some Observations on Terminology and Scope’ (1996) 3(3) *Murdoch University Electronic Journal of Law*.

¹⁴ See National Anti-Discrimination Information Gateway (2008) <<http://www.antidiscrimination.gov.au>> at 6 July 2009.

¹⁵ Committee on the Elimination of All Forms of Discrimination against Women, *Concluding comments of the Committee on the Elimination of All Forms of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (3 February 2006) [13] (2006 CEDAW Concluding Comments).

comprehensively protected in Australia in federal law’ and recommended that Australia ‘adopt Federal legislation, covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-discrimination.’¹⁶

- 3.11. Similarly, the Committee on Economic, Social and Cultural Rights expressed concern that ‘the State party’s anti-discrimination legislation does not provide comprehensive protection against all forms of discrimination in all areas related to the Covenant rights’ and recommended that Australia ‘enact federal legislation to comprehensively protect the rights to equality and non-discrimination on all the prohibited grounds’.¹⁷

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government implement the recommendations of the Senate Legal and Constitutional Affairs Committee on reform of the *Sex Discrimination Act*, including the issue of enacting an Equality Act to provide a comprehensive regime to promote equality and address all grounds of discrimination.
- ⇒ THAT State and Territory governments review their anti-discrimination laws and frameworks in light of the Senate Committee’s recommendations.
- ⇒ THAT the Australian Government adopt laws and policies which provide comprehensive protection of the right to equality and non-discrimination, including measures which:
 - provide a legal right to substantive equality and adequately address systemic discrimination;
 - allows for both representative and individual complaints;
 - address compounded or intersectional discrimination;
 - prohibit discrimination, harassment and vilification as well as ensuring equality;
 - allows for temporary special measures and general conditions to promote equal opportunity; and
 - do not allow for permanent exceptions to the functioning of the laws, for example for religious or voluntary bodies.
- ⇒ THAT the Australian Government be commended for the establishment of an online portal on anti-discrimination laws and commissions.

4. Funding for the work of the Sex Discrimination Commissioner

- 4.1. In 2007-08, the Australian Human Rights Commission received 2,077 complaints under federal anti-discrimination and human rights law. The number of complaints has increased by 28% compared to the average number of complaints received over the past four years and 17% compared to the previous reporting year.¹⁸ The Sex and Age Discrimination Unit of the Commission, headed by the Sex and Age Discrimination Commissioner, employs five full-time equivalent permanent staff, including management and administration, to carry out policy development, education, research, submissions, public awareness, inquiry and complaint response functions under both the *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth).

¹⁶ Human Rights Committee, *Concluding Observations on the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2 April 2009) [12].

¹⁷ CESCR, *Concluding Observations*, above n 4, [14].

¹⁸ Australian Human Rights Commission, ‘Complaint Handling Statistics’, *Annual Report 2007-2008* (2008) chap 4.3 <http://www.humanrights.gov.au/about/publications/annual_reports/2007_2008/chap4.html#4_3_7> at 6 July 2009.

- 4.2. The Australian Human Rights Commission's appropriation revenue in 2008-09 was \$13.55 million. This was approximately 12.5% less than the budget appropriation for 2007-08.¹⁹ This is the greatest decrease in the Commission's budget since 1996, when the Commission's total funding base was reduced by 40% over four years.
- 4.3. To accommodate the reduction in the Commission's appropriation in 2008-09, all business units had their operating budgets reduced by 14.5%, including the Sex and Age Discrimination Unit. The Unit actually requires a boost to funding in order to adequately discharge its functions.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government ensure that the Australian Human Rights Commission and its business units are provided with adequate funding to properly discharge their functions.

5. Discrimination against women in prison infrastructure and processes

- 5.1. Sisters Inside (Qld),²⁰ Beyond Bars (NSW),²¹ the Federation of Community Legal Centres (Vic)²² and the Ombudsman for the Northern Territory²³ 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 education and training programs; access to work; access to health services; and the practice of strip searching. They present evidence that the key means of race discrimination against 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.²⁴
- 5.2. Fewer rehabilitation, education and training opportunities exist for women prisoners than for men. Such programs should be expanded and generally implemented, to improve women's post-release prospects.²⁵

¹⁹ Budget appropriation for 2007-08 was \$15.5m reduced to \$14.981m at additional estimates with the withdrawal of funding for workplace relations reform and the application of the additional 2% efficiency dividend: HREOC, *SDA Submission*, above n 7, 217.

²⁰ Sisters Inside, *Submission of Sisters Inside to the Anti Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners In Queensland* (June 2004) <<http://www.sistersinside.com.au/media/adcsqsubmission.pdf>> at 6 July 2009. Issues of women prisoner's human rights and systematic discrimination on the basis of gender and intersectional forms of discrimination are comprehensively reviewed in Sisters Inside, *Submission to the National Human Rights Consultation: Rights of Women Prisoners* (June 2009).

²¹ Kat Armstrong, Vicki Chartrand and Eileen Baldry, Beyond Bars Alliance NSW, *Submission to the Anti Discrimination Commissioner for an Inquiry into the Discrimination Experienced by Women within the Criminal Justice System in New South Wales* (June 2005) <<http://www.sistersinside.com.au/media/NSWADCreport.pdf>> at 6 July 2009.

²² Federation of Community Legal Centres and Victorian Council of Social Services, *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons* (April 2005) <<http://www.sistersinside.com.au/media/VICComplaint.pdf>> at 6 July 2009.

²³ Ombudsman for the Northern Territory, *Women in Prison, Northern Territory (Report of the investigation into complaints from women prisoners at Darwin Correctional Centre)* (2008).

²⁴ See also National Association of Community Legal Centres, Human Rights Law Resource Centre Ltd and Kingsford Legal Centre, *Freedom, Respect, Equality, Dignity: Action – NGO Submission to the UN Committee on Economic, Social and Cultural Rights – Addendum: Australia* (May 2009), [257]-[260].

²⁵ Smart Justice, *Fact Sheet 7: Women in Prison: Best Place for Them?* (2006) 2, available from <http://www.smartjustice.org.au/index.php?option=com_content&task=view&id=29&Itemid=43> at 6 July 2009.

5.3. Both international and Australian studies have found that:

female offenders are more likely than male offenders to be primary caregivers, to have been unemployed prior to sentencing, to have mental health problems, to have experienced high levels of addiction, and to have suffered domestic violence and sexual abuse in the past.²⁶

5.4. Further, studies suggest that the majority of female prisoners in Australia are mothers of dependent children who are most likely to be under the age of 12.²⁷ Protocols and policies for arresting and incarcerating parents with dependent children are minimal and, where they do exist, are inconsistent between jurisdictions.²⁸ To use Victoria as an example:

- Victoria Police has no guidelines or policies that cover the apprehension, arrest, charging or detention of primary carers with dependent children;²⁹
- Victorian bail laws do not refer to the needs of dependent children, and there are no court, police, prisons or human services guidelines or policies in place regarding who takes responsibility for children when a mother is unable to obtain bail;³⁰ and
- on entering a Victorian prison, no policy exists for ascertaining the existence of dependent children and whether the children are currently at risk.³¹

5.5. Where a parent must be incarcerated, all attempts should be made to maintain the parent-child relationship. Whilst parents may have statutory rights to personal visits, Australian prisoners frequently report difficulties in maintaining a relationship with their children.

5.6. See also the discussion of women with disability in prison under ‘Women with disability: over-representation in prisons’ in relation to article 15, at paragraph 82.1 below.

Recommendations proposed for Concluding Comments

- ⇒ THAT State and Territory governments, and relevant statutory authorities, examine allegations of discrimination in the prison system and introduce the necessary reforms to eliminate discriminatory practices.
- ⇒ THAT the Australian Government ensure that all States and Territories implement consistent policies addressing the needs of incarcerated mothers where they have dependent children, in particular by considering alternative sentencing options such as the suitability of home detention, periodic detention or community-based orders.

6. Lack of anti-discrimination protection on the basis of sexual orientation or gender identity

6.1. Despite the welcome reforms to the recognition of same-sex couples in relation to financial and work-related benefits and entitlements (see ‘Discrimination against same-sex couples in relation to marriage and adoption’ in relation to Article 16 under paragraphs 88.1-88.2

²⁶ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report No 103 (April 2006) [29].

²⁷ See Rosemary Woodward, ‘Families of Prisoners: Literature Review on Issues and Difficulties’ (Occasional Paper No 10, Department of Family and Community Services, 2003) 5.

²⁸ Renee Lees, Justice Action, *Stop the Women’s Jail Anti-Prisons Resource Kit* (2001).

²⁹ Victorian Association for the Care and Resettlement of Offenders, *Children: Unintended Victims of Legal Process* (2006) Executive Summary, 3.

³⁰ *Ibid.*

³¹ *Ibid* 4.

below), there is still no comprehensive federal law prohibiting discrimination against same-sex couples or discrimination on the basis of sexual orientation or gender identity.³² Without comprehensive legislative protection, discrimination against same-sex couples continues to occur in federal, state and territory jurisdictions in Australia.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments enact comprehensive legislation prohibiting discrimination on the basis of sexual orientation or gender identity.
- ⇒ THAT all Australian governments remove exemptions in their anti-discrimination framework which discriminate against lesbian, gay, bi-sexual, intersex, trans-sexual and transgender people

7. Vulnerable socio-economic status of older or aged women

- 7.1. Older women often face discrimination based on their age as well as their sex. Discriminatory attitudes and stereotypes in the workplace and in other social spaces create particular barriers for older women in achieving equal enjoyment of their human rights. While the United Nations Declaration on Human Rights does not explicitly list age as one of the grounds on which discrimination should not occur, the principle of non-discrimination on the basis of age is well-developed in international human rights law. This principle has recently been recognised in Australian anti-discrimination legislation through the *Age Discrimination Act 2004* (Cth).
- 7.2. The Australian Government passed the *Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008* (Cth) in June 2009.³³ The new legislation, once put in place, will remove the ‘dominant reason’ test from the *Age Discrimination Act 2004* (Cth). As a result, conduct that unreasonably discriminates against a person based on their age will be unlawful even if there are other non-discriminatory reasons for the conduct.
- 7.3. Community organisations at our consultations reported that older women are a particularly vulnerable social group, due to a range of factors associated with aging, including:
- the increasing health needs and costs;
 - the long-term impact of historical disadvantage in educational opportunities;
 - lower participation rates in workforce linked to stereotyping leading to long-term economic disadvantage (refer to ‘Retirement incomes’ discussed in relation to article 11 at paragraphs 46.1-46.3 below);
 - social and cultural discrimination and isolation, particularly where women have been widowed or divorced;
 - aged women with ongoing mental health issues being at increased risk of sexual harassment;
 - decreased ease of access to transport;

³² We note that a recent national poll has found 85% support among the Australian public for the introduction of federal laws to protect people from discrimination on the basis of sexual orientation and gender identity: Australian Human Rights Commission, ‘Sexual orientation and gender identity: national poll shows support for new anti-discrimination laws’ (Press Release, 1 July 2009).

³³ Robert McClelland, Attorney-General and Bill Shorten, Parliamentary Secretary for Disabilities and Children’s Services, ‘Further Measures to Improve Disability Rights’ (Joint Press Release, 25 June 2009).

- eroded security of tenure, increased reliance on residential care facilities, family and friends, and increased risk of homelessness – we were provided with one case study where an older mother was induced to transfer property to her child in exchange for care, resulting in disadvantageous social security treatment and, ultimately, her experience of homelessness;³⁴
- weak economic resources hindering women in competing for private rental (eg providing bond money) – in 2008, 57.4% of all age pensioners were women, and 71.8% of single age pensioners were women;³⁵
- in circumstances of homelessness, women’s shelters are not appropriate for aged women;
- an overly complex regulatory system for retirement villages under the *Aged Care Act 1997* (Cth), where there is a female:male resident ratio of 4:1;³⁶ and
- ongoing caring responsibilities – 19% of women between the ages of 65 and 74 continue to be carers.³⁷

7.4. In September 2007, the *Older People and the Law* report (House of Representatives Standing Committee on Legal and Constitutional Affairs) made several recommendations in relation to fraud and financial abuse, substitute decision-making, family agreements, access to legal services, discrimination and retirement villages, aimed at improved protection of older Australians. These recommendations would also enhance the protection and well-being of older women. To date, the majority of these recommendations are yet to be implemented.³⁸

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government formally respond to the House of Representatives Standing Committee on Legal and Constitutional Affairs’ report, *Older people and the law*, and implement its recommendations, including for the purpose of improving the protection of older women from social and economic marginalisation and abuse.

8. Unavailability of gender disaggregated data

8.1. The availability of gender disaggregated data remains a challenge, particularly in relation to access, analysis and reporting of the data. Some data is collected and is publicly accessible on relevant websites, however the expenses of undertaking disaggregation often inhibit analysis of the data and the availability of relevant data. Further, gender disaggregated data is rarely made available in a ‘user-friendly’ format and in a way that makes relevant series of data easy to identify. NGOs are at a significant disadvantage in not having under their control the necessary financial resources, infrastructure and statistical expertise to conduct the detailed monitoring and statistical analysis required to conduct human rights advocacy.

³⁴ Other stories of dependency leading to financial abuse were recounted in Standing Committee on Legal and Constitutional Affairs, House of Representatives, Parliament of Australia, *Older people and the law* (2007) 25-7.

³⁵ Tanya Plibersek, Minister for the Status of Women, ‘Budget 2009-10: Women’ (Ministerial Statement, 14 May 2009) 5 (*2009 Women’s Budget Statement*).

³⁶ House of Representatives, *Older people and the law*, above n 34, 205.

³⁷ *Ibid* 2.

³⁸ The exception is Recommendation 43, where the Standing Committee on Legal and Constitutional Affairs recommended that the *Age Discrimination Act 2004* be amended to remove the ‘dominant reason’ test contained in s 16, thus bringing this legislation into line with other anti-discrimination statutes – refer to paragraph 7.2 above.

- 8.2. While we note that the inclusion of gender disaggregated data has generally improved in the current Australian Government Report, it often includes snap shot data at a point in time (being the latest data available) rather than providing sets of historic time series data which would actually assist NGOs to monitor progress on certain human rights issues; that is, whether the situation improving, staying the same, or deteriorating.
- 8.3. There is a continuing lack of accessible data across many spheres to support the community sector to meaningfully understand how women with disability are affected by policy and program implementation, primarily because the collection of disaggregated data is rarely and inconsistently undertaken. No systematic, sustained and across-the-board attempt has been made to redress the lack of meaningful data about people with disability (disaggregated by gender) on issues including service use and unmet need, in contrast with initiatives being undertaken focused on other demographic areas.
- 8.4. Despite the particular concerns expressed in the 2006 Concluding Comments on the lack of reporting of data disaggregated by gender, sex and disability which would support effective analysis of legal and policy measures taken towards the practical realisation of equality, these comments have not manifestly improved the community's ability to access relevant data.³⁹ We note that the Office for Women has worked collaboratively with the Australian Bureau of Statistics and NGOs in response to the Concluding Comments, however, additional resources are required to be channeled into making gender disaggregated data available in order to provide women's NGOs with adequate statistics to monitor and report on Australia's international human rights obligations, including those under CEDAW and the *UN Convention on the Rights of Persons with Disabilities*.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government provide the necessary resources to the Office for Women and various collection and reporting agencies (particularly the Australian Bureau of Statistics) to improve the public availability of gender disaggregated data (in terms of access, analysis and reporting).
- ⇒ THAT the Australian Government take measures to strengthen their response to the 2006 Concluding Comments in relation to conducting regular analysis of legal and policy measures taken towards the practical realisation of equality, including through the use of disaggregated data in supporting such analysis.

³⁹ 2006 CEDAW Concluding Comments, above n 15, [14].

Article 4: Temporary Special Measures

For information on Article 4 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

9. Review of the Equal Opportunity for Women in the Workplace Act

- 9.1. In May 2009 the Australian Government announced a review of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). The review affords the Government an opportunity to strengthen the mechanisms to ensure women's equal participation in the workforce. The review is anticipated to take several months.
- 9.2. There are a number of CEDAW provisions relevant to the achievement of women's equal participation in the workforce, including those related to equality in employment, the adoption of temporary special measures, and measures to address sex role stereotypes and prejudice, particularly in relation to caring work.

Recommendations proposed for Concluding Comments

⇒ THAT the review of the *Equal Opportunity for Women in the Workplace Act* be welcomed, and that the Australian Government provide information on implementation, and clarify whether all CEDAW obligations have been implemented in the course of the review.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 4

10. Underrepresentation of women on boards/senior management

- 10.1. In October 2008, the Equal Opportunity for Women in the Workplace Agency released the results of the latest Australian Census of Women in Leadership, which found that the number of women in board director and executive management roles has declined since 2006, and in some cases dropped to the lowest levels since 2002 when the Census began collecting data.⁴⁰ The number of board director positions held by women in the largest 200 publicly listed companies in Australia declined from 8.7% in 2006 to 8.3% in 2008, and the rate of women occupying executive management positions has declined from 12% in 2006 to 10.7% in 2008. The number of companies with no women executive managers has risen from 39.5% to 45.5%. Declines in line management and executive management team positions have similarly occurred. One reason flagged for the decline has been the increased number of mining, materials and energy companies joining the list of the largest 200 publicly listed companies – highlighting the issue of gender segregation in traditionally male-dominated industries.

⁴⁰ The Census results are available from Equal Opportunity for Women in the Workplace Agency, *EOWA 2008 Australian Census of Women in Leadership* (2008), available from http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Agender_in_the_boardroom/2008_EZ_Media_Kit.asp at 6 July 2009.

10.2. At paragraph 2.23, the Australian Government Report states that the Government does not support the adoption of quotas or targets as recommended by the 2006 Concluding Comments.

10.3. To better understand the decline in women's leadership in the corporate sector, the Equal Opportunity for Women in the Workplace Agency commissioned the report *Agender in the Boardroom*, released in November 2008. The Report found that:⁴¹

...[at] all stages of a woman board director's career from being selected from the talent pool to appointment to the board and finally, their experiences once serving as a board director... [they] face negative generalisations regarding their skills, abilities and potential to contribute as business leaders; contradictory criticisms about their behaviour in the boardroom and approach to decision-making; and boardroom dynamics that strongly indicate that the boys' club prevails, perpetuating their exclusion.

...there is a tendency to perceive women directors as contributors of lesser value than men, 'tokens' and mainly equipped with 'soft' skills.

10.4. The Report made several recommendations to business for improving the recruitment, retention and promotion of women to senior management positions. Among these were measures akin to the introduction of quotas, or measures that would support the successful implementation of quotas, namely:

- define targets for women in leadership programs, pools of high potential employees and on succession planning lists;
- make managers accountable for promoting women; and
- measure progress by division, department and manager to identify blockages and encourage progress.⁴²

10.5. 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 a 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.⁴³

10.6. We note the parliament in Norway systematically introduced legislation requiring 40% female representation on boards, first in relation to state owned and inter-municipal companies and later for the top 500 publicly-listed companies, with a two-year transition phase in each case. The legislation enabled courts to dissolve companies that did not comply. The targets were achieved by a vast majority of organisations within the two-year period.⁴⁴

⁴¹ Equal Opportunity for Women in the Workplace Agency and Egon Zehnder International, *Agender in the Boardroom – Executive Summary* (2008) 4, 6.

⁴² Ibid 15.

⁴³ Women's Rights Action Network of Australia, *Our Rights, Our Voices: The Australian Capital Territory Community Report on Women* (2004) 14.

⁴⁴ Arni Hole, Director General, Ministry of Children and Equality, Norway, 'Government action to bring about gender balance' (Time for Action: 2nd Diversity on Boards Conference, 2009) <<http://www.womenonboards.org.au/events/diversity2009/norway.htm>> at 6 July 2009.

- 10.7. It should also be noted that women with disability have little public role in leadership and decision-making, and are generally excluded from being considered able to participate in this part of our community.

CEDAW Committee consideration of the issue

- 10.8. In the 2006 Concluding Comments, the CEDAW Committee recommended that the Australian Government:

fully utilize the Sex Discrimination Act and consider the adoption of quotas and targets... to further increase the number of women in public and political life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, particularly indigenous women and women belonging to ethnic minorities.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments adopt an ACT-style quota system for improving female representation on government-controlled boards.
- ⇒ THAT all Australian governments adopt a range of supportive measures to improve women's board participation – such as targeted board skills training and subsidised child care, until such time as measurable participation targets have been met.
- ⇒ THAT the Australian Government use financial incentives (eg tax concessions) and other legislative measures to encourage improved female board representation in public organisations and public companies.

Article 5: Sex roles and stereotyping

For information on Article 5 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 5

11. Wrongful gender stereotyping

11.1. Wrongful gender stereotyping is socially pervasive and persistent in Australia, and is a significant obstacle to the elimination of all forms of discrimination against women and the realisation of substantive equality. Although wrongful gender stereotyping affects both sexes, it has had, and continues to have, a particularly harmful effect on women. Of particular concern are:

- *stereotypes of women as primary caregivers*, which implies that women (and, conversely, not men) should prioritise childrearing and other forms of caregiving (eg caring for ill or older relatives) over all other roles they might perform or choose;
- *stereotypes of men as primary breadwinners*, which implies that men (and, conversely, not women) should bear the principal responsibility for providing for, and ensuring, the financial security of their families, and that this role should be prioritised over all other roles they might perform or choose, but including especially caregiving (which is seen as a women's role); and
- *stereotypes of women as sex objects*, which implies that women should conform to prevailing concepts of beauty and sexuality and are therefore only valued for their beauty and sexual attractiveness.

As the discussion below demonstrates, these stereotypes have been applied in laws, policies and practices, and have been perpetuated as a result of the Australian Government's failure to take positive steps to ensure their elimination, thereby impairing or nullifying women's rights to non-discrimination and substantive equality, and their other human rights and fundamental freedoms.

11.2. In recognition of the harms that women suffer as a result of wrongful gender stereotyping, Australia's Federal Attorney-General has stated that '[t]he Rudd Government is committed to overcoming the stereotypes and prejudices that can stifle women's rights and weaken equality.'⁴⁵ While this is a positive statement of principle from the Government, harmful gender stereotypes, including those named above, are robust in Australia and little concrete action has been taken to date to ameliorate the impact of stereotyping on women's rights.

⁴⁵ Robert McClelland, Attorney-General and Tanya Plibersek, Minister for Housing and the Status of Women, 'Australia Comes in From the Cold on Women's Rights' (Joint Media Release, 24 November 2008) <http://www.tanyaplibersek.fahcsia.gov.au/internet/tanyaplibersek.nsf/content/womens_rights_25nov08.htm> at 6 July 2009.

12. Stereotypes around work and caring

- 12.1. Two of the most entrenched gender stereotypes in Australia are the *sex-role stereotype of women as primary caregivers* and the *sex-role stereotype of men as primary breadwinners*. While these stereotypes have operated to disadvantage women in a number of sectors in Australia, they have had a particularly marked effect in the family and the employment sector.

Worksafe Victoria

- 12.2. One example of the perpetuation and effect of the sex-role stereotypes of women as primary caregivers and men as primary breadwinners is a series of television advertisements for WorkSafe Victoria⁴⁶ that are intended to foster public awareness about the importance of workplace safety. Although the purpose of these advertisements is legitimate (that is, a safe workplace for all individuals), Worksafe Victoria perpetuates the above-mentioned stereotypes by overwhelmingly casting men in the character of ‘worker’ and women in the character of ‘carer’. The advertisements regularly depict men at the worksite while, for the most part, showing women at home caring for children, performing domestic chores, and waiting anxiously for their husbands to return home safely. These advertisements send a stereotypical message that the State of Victoria believes that it is men, and not women, who should be a family’s primary breadwinner. They also send a stereotypical message that the State of Victoria believes that women’s ‘proper’ role is as mothers and carers, with the implication that women should prioritise childrearing over all other roles they might perform or choose. The effect of these advertisements is to encourage women to stay at home and not to pursue a career or education distinct from that of their roles as mothers and carers.

Paid parental leave

- 12.3. Another example of the perpetuation of the sex-role stereotypes of women as primary caregivers and men as primary breadwinners is the recent debate in Australia regarding the need for, and nature of, a paid parental leave scheme. Largely invisible from this important (and long overdue) debate was the role of men in caregiving. In contrast, women’s role as carers was not only front and centre of the debate, but the debate was also conducted in a way that often assumed that women *should* fulfill the role of carers. For example, public debate mostly centered on paid ‘maternity’ leave, in contrast to the concept of ‘parental’ leave which emphasises the common responsibility of women and men in the upbringing of children. The policy announced in the 2009-10 Australian Government Budget is a ‘paid parental leave’ scheme (see discussion under ‘Paid Parental Leave’ in relation to article 11, at paragraphs 41.1-41.4 below), however, concerns remain that the deferral of consideration of paid paternity leave provisions will interact with entrenched community attitudes in a manner which perpetuates women’s roles as primary care givers.
- 12.4. Currently in Australia, around 75% of fathers take leave around the birth of their child. Of these, 60% take paid annual/holiday leave, 27% take paid paternity leave and around 9% take unpaid paternity leave.⁴⁷ The paid parental scheme that will be introduced in January

⁴⁶ WorkSafe Victoria is manager of the workplace safety system in the State of Victoria. For an example of the advertisements referred to, see WorkSafe Victoria, *Campaigns: Valuing Safety* (2009)

<<http://www.workcover.vic.gov.au/wps/wcm/connect/WorkSafe/SiteTools/About+WorkSafe/Campaigns/>> at 6 July 2009. We further note that the gendered trends are likely to continue as WorkSafe Victoria is currently seeking ‘stars’ for a further series of television advertisements among the Victorian Football League: WorkSafe Victoria, “‘Lights, camera and action’ on local footy legends” (Press Release, 22 June 2009).

⁴⁷ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Inquiry Report (2009) 4.48.

2011 has deferred consideration of paternity leave and excludes any payment for secondary carer leave, which in practice will fail to value in financial terms the contribution of fathers to child-rearing. This exclusion negates the scheme's ability to support male participation in care-giving in the home, particularly given the increased financial pressure associated with newborn children (due to interrupted workforce participation and costs associated with the child).⁴⁸ This exclusion also therefore perpetuates sex-role stereotypes of women as primary caregivers and men as primary breadwinners.

State failure to adopt all appropriate measures to eliminate gender stereotypes

- 12.5. Notwithstanding the obligations incumbent on the Australian Government under articles 5(a) and 2(f) and the overarching object and purpose of CEDAW,⁴⁹ the Government has failed to take all appropriate measures to respect, protect and fulfill women's right to non-discrimination and substantive equality and their right to be free of wrongful gender stereotyping. The Government has not named the operative gender stereotypes or adopted measures, such as conducting education campaigns or sanctioning wrongful gender stereotyping, which would aid the identification and elimination of the sex-role stereotypes of women as primary caregivers and men as primary breadwinners.
- 12.6. For example, the Government has taken minimal steps to encourage or require workplaces to adopt policies and foster a culture that supports men who choose to perform the role of primary caregiver. Such measures would allow both sexes to share equitable caregiving, and would lessen the impact that having children has on women's full development and advancement.⁵⁰ In this connection, we note that the Committee on Economic, Social and Cultural Rights has recently discussed the issue of 'social construction of *gender* stereotypes, prejudices and expected roles', and that '[r]efusal to grant paternity leave may also amount to discrimination against men'.⁵¹ The intractable nature of the non-participation of men in caring has been recognised in a recent Australian report on women's lack of attainment to senior Board positions and management. The report recommended that:

Businesses should also ensure their policies and workplace culture support men who choose to take time out to raise children. This will allow women and men to more equitably share caring responsibilities, which may mean shorter periods out of the workforce for women, lessening the damage to women's careers and reducing the stigma attached to career breaks.⁵²

⁴⁸ Fathers of infants work an average of 46 hours per week, which is more than other categories of male workers: Elizabeth Broderick, Sex Discrimination Commissioner, 'Gender equality in 2008: What matters to Australian women and men' (Speech delivered at Sydney Girls High School for the launch of the Listening Tour Community Report, Sydney, Australia, 22 July 2008) <http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2008/20080722_equality.html> at 6 July 2009.

⁴⁹ The CEDAW Committee has explained that, in order to eliminate all forms of discrimination against women, States Parties must satisfy three core obligations. The third of these obligations is to 'address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions': Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation No. 25: Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, UN Doc A/59/38 (2004) [7]. See also CESCR, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20 (2009) [20], [35]; CESCR, *General Recommendation No. 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights*, UN Doc E/C.12/2005/4 (2005) [11], [19].

⁵⁰ Equal Opportunity for Women in the Workplace Agency and Egon Zehnder International, *Agender in the Boardroom*, above n 41, 14.

⁵¹ CESCR, *General Comment No. 20*, above n 49, [20].

⁵² Equal Opportunity for Women in the Workplace Agency and Egon Zehnder International, *Agender in the Boardroom*, above n 41, 14.

- 12.7. The Sex Discrimination Commissioner has called for comprehensive legislative protection from discrimination for both men and women as a result of family and caring responsibilities, stating that '[i]t's not about women caring less, it's about enabling men to care more'.⁵³

Recommendations proposed for Concluding Comments

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

13. Stereotypes around women's health

- 13.1. The Australian Government Report frames the health issues experienced by women as predominantly reproductive and gynecological issues. This tends to perpetuate gender stereotypes about health whereby male bodies are the 'norm' and female bodies are 'other'. When such stereotypes prevail, specifically female health issues are only identified in relation to women's reproductive functions, and other particularly female experiences of health are measured and diagnosed with reference to the male norm. Such gender stereotypes about women's health can have a tangible impact on funding, popular awareness, detection and treatment.
- 13.2. For example, cardiovascular (heart) disease is the leading cause of death for women, more so than breast cancer.⁵⁴ It is especially prevalent in older women, and more than 22,000 women die annually of cardiovascular disease. However, cardiovascular disease is popularly associated with middle-aged males. Evidence suggests that women's experience of heart disease is different to that of men and symptoms are likely to be atypical. Both women and health practitioners fail to recognise these symptoms, leading to a delay in treatment.
- 13.3. Although the Australian Government has committed billions of dollars in cardiovascular disease research, drug availability and preventative health programs, these expenditures do not specifically target women.⁵⁵ The National Heart Foundation has recently launched a 'Go Red for Women' campaign that aims to raise awareness of cardiovascular disease in women.
- 13.4. Beyond cardiovascular disease, other health issues such as mental illness and lung cancer have higher incidence in women than men – however, a gendered framework is also not applied to the health policy formulated to address these diseases.
- 13.5. Also refer to 'National Women's Health Policy' in relation to article 12 at paragraphs 52.1-52.3 below.

⁵³ Elizabeth Broderick, Sex Discrimination Commissioner, 'Women on the Verge of Recession: Confronting Gender Issues in Turbulent Times' (Speech delivered at the National Press Club of Australia, Canberra, Australia, 29 April 2009)

<http://www.hreoc.gov.au/about/media/speeches/sex_discrim/2009/20090429_Press_Club.html> at 6 July 2009.

⁵⁴ Nicola Roxon, Minister for Health and Ageing, 'Myth busting - cardiovascular disease and women' (Press Release, 2 June 2009)

<<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-nr-nr077.htm?OpenDocument&yr=2009&mth=6#>> at 6 July 2009.

⁵⁵ Ibid.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government ensure that the National Women's Health Policy currently being developed makes it a priority to identify gendered stereotypes about health policy, and conducts gender analysis of all major investments and programs in health policy.

14. Body image and media portrayal of gender

14.1. Negative body image is having a significant and negative impact on the self-image of young Australians, with young women being particularly susceptible to negative social and cultural stereotypes.⁵⁶ For the last two years, body image has been nominated by all young people and by young women as their top issue of concern, just ahead of drugs, family conflict and personal safety.⁵⁷ Underlying the body image anxieties of young women is the stereotype of women as sex objects, particularly bodies with characteristics of being unnaturally thin, young and Anglo-Saxon. The sex object stereotype implies that women derive their worth from beauty and physical or sexual attractiveness.

14.2. There is arguably an epidemic of body dissatisfaction in Australia. 70–76% of high school girls consistently choose a figure that is thinner than their own as their ideal; over 50% of high school girls have tried to lose weight, and only 16% of young women are happy with their body.⁵⁸ Negative or sexualised self-image has been linked to other psycho-social problems:

...exposure to ideals of sexual attractiveness contributes to body image dissatisfaction and eating disorders... [Sexualisation] was linked with three of the most common mental health problems in girls and women: eating disorders, low self-esteem and depression or depressed mood.⁵⁹

14.3. One in 100 girls develop anorexia (the third most chronic illness for adolescent Australian girls), and one in five are bulimic.⁶⁰

14.4. Media and advertising industry portrayal of women and gender is commonly thought of as leading contributing factors for the prevalence of negative body image in women.⁶¹ Although the Australian Government Report cites the Australian Government Television Industry Code of Practice in the context of broadcasting media,⁶² our consultations also highlighted portrayal in print media as a major issue, particularly the prevalence of male magazines that promote a sexualised portrayal of women's bodies.⁶³

14.5. In response to concerns about the impact of negative body image on other social and health-related issues, the Australian Minister for Youth has begun a process towards developing a

⁵⁶ Body Image Working Group, *Report of the Media Code of Conduct on Body Image Working Group* (July 2007), 8.

⁵⁷ Mission Australia, *National Survey of Young Australians 2008: Key and Emerging Issues* (2008), 11-12.

⁵⁸ Australian Government Office for Youth, *Body Image Information Paper* (2009) 15, available from <<http://www.youth.gov.au/bodyimage.html>> at 6 July 2009. See also *ibid* 8-10.

⁵⁹ Women's Forum of Australia Submission, cited in Standing Committee on Environment, Communications and the Arts, Senate, Parliament of Australia, *Inquiry into the sexualisation of children in the contemporary media environment* (2008) [3.32].

⁶⁰ Melinda Tankard Reist, Director of Women's Forum of Australia, cited in *ibid* [3.33].

⁶¹ This was reflected in several submissions to a recent Senate Inquiry. See Senate Standing Committee on Environment, Communications and the Arts, *Inquiry into the sexualisation of children in the contemporary media environment* (26 June 2008), [3.3]-[3.4].

⁶² Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, *Australia's combined sixth and seventh report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women* (2008) [3.12] (**Australian Government Report**).

⁶³ For example, publications such as *Zoo* and *Ralph*.

National Strategy on Body Image. A National Advisory Group on Body Image comprised of experts in the areas of body image, youth engagement, media, fashion and advertising was convened in March 2009,⁶⁴ and an online consultation on body image launched in May 2009. Results of the consultation process, which concluded on 5 June 2009, will inform the development of the National Strategy.

- 14.6. The Australian Government has also allocated \$125,000 to develop a Voluntary National Media and Industry Code of Conduct on body image.⁶⁵ We note the valuable work of the Victorian Media Code of Conduct on Body Image Working Group, although the code this Group recommended is intended to be voluntary.⁶⁶

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government's intention to develop a National Strategy on Body Image be commended, and that the countering of negative body image stereotypes be adopted as a key rationale for this Strategy.
- ⇒ THAT the adoption of a National Media and Industry Code of Conduct that applies across different forms of media, and other commercial incentives for promoting positive body image be encouraged.

15. Sports women in the media

- 15.1. Despite the Australia Government's television and radio Codes of Practice, which advise broadcasters to avoid stereotyped gender portrayals and include more coverage of the achievements of women in areas like sport, the portrayal of sports women in the media remains a major issue of concern.⁶⁷ The stereotypes informing the choices of broadcasters are that physical activity and strength in female bodies is not culturally popular or desirable, that women's competitive sport will be less interesting to the viewing public and, therefore, less commercially successful. Women's sport gets limited media coverage which has an impact on sponsorship opportunities for sports women, with flow-on effects for elite sports women needing to balance other paid work with sports training. Limited media coverage also contributes to a paucity of role models for adolescent girls in sport.
- 15.2. It is noted that the achievements of Australian women both at an individual level and as a team (eg swimmers, basketball, cricket, hockey and netball teams) are amongst the best in the world, yet fail to receive the media coverage that they deserve. The last comprehensive research into this topic commissioned by the Australian Sports Commission was conducted more than a decade ago in 1996.⁶⁸

⁶⁴ Terms of reference of the National Advisory Group on Body Image are available at Department of Education, Employment and Workplace Relations, Australian Government, *What the Government is Doing* (2008) <<http://www.youth.gov.au/bodyimagegovernment.html>> at 6 July 2009.

⁶⁵ Kate Ellis, Minister for Youth, 'National Media and Industry Code of Conduct on Body Image' (Press Release, 5 December 2008) <http://www.deewr.gov.au/Ministers/Ellis/Media/Releases/Pages/Article_081208_110422.aspx> at 6 July 2009.

⁶⁶ Body Image Working Group, *Report*, above n 56, 7.

⁶⁷ Australian Government Report, above n 62, [3.12].

⁶⁸ See Murray Phillips, Australian Sports Commission, *An illusory image: A report on the media coverage and portrayal of women's sport in Australia* (1996).

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government provide financial support for initiatives that increase the quantity and quality of media coverage for women's sport.
- ⇒ THAT research to replicate and extend the media study commissioned by the Australian Sports Commission in 1996 be conducted and the results of the proposed study be widely disseminated.
- ⇒ THAT the Australian Government lead the implementation of the recommendations of the UN Division for the Advancement of Women publication *Women 2000 and beyond: Women, gender equality and sport* regarding media coverage of women's sport.

Article 6: Suppression of the exploitation of women

For information on Article 6 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the *Aboriginal and Torres Strait Islander Women's Report*.

POSITIVE DEVELOPMENTS

16. Significant funding to support the criminalisation of trafficking and trafficked women

- 16.1. The vast majority of people trafficked to Australia identified to date have been women, including for sexual servitude and bonded labour. The *Criminal Code Amendment (Trafficking in Persons) Offences Act 2005* (Cth) comprehensively criminalises the practice of trafficking in persons. The *Commonwealth Action Plan to Eradicate Trafficking in Persons* program was initially funded with approximately \$20 million in 2003, and received a further \$38.3 million in 2007.⁶⁹ The Action Plan intends to address 'the full trafficking cycle' through elements focused on prevention, detection and investigation, prosecution and victim support.⁷⁰ This represents a significant commitment to the prevention of trafficking to Australia.
- 16.2. The *Support for Victims of People Trafficking Program* (the 'Trafficking Support Program') is delivered by the Office for Women to persons identified as eligible by the Australian Federal Police. The Program provides differing types of social support benefits depending on whether the claim of a suspected trafficking victim is being assessed as part of the Trafficking Support Program's Assessment Stream, Justice Support Stream or Trial Stream.⁷¹ The Government has recently required that implementing agencies under the Trafficking Support Program make a formal complaints mechanism available to trafficking victims.
- 16.3. In 2007-08, the Government conducted a review of visa policy and trafficking support programs in consultation with the Australian Human Rights Commission and NGOs, and in 2008 established a National Roundtable on People Trafficking.⁷² The outcomes from this included:
- the establishment of a Working Group which released Guidelines for NGOs Working with Trafficked People based on the provision of safe, ethical and human-rights focussed services;⁷³

⁶⁹ Attorney-General's Department, Australian Government, *The Commonwealth Government's Anti-Trafficking Strategy* (circa 2003), available from <http://www.ag.gov.au/www/agd/agd.nsf/Page/People_Trafficking> at 6 July 2009; Australian Government Report, above n 62, [4.7].

⁷⁰ We note that the term 'victim' is highly contested because of the passivity and lack of agency it implies that trafficked women have in the context of their circumstances. We do not use this term to imply this. Rather, the term 'victim' is used here for consistency with the terminology that is most commonly engaged within anti-trafficking discourse at both the Government and non-Government levels.

⁷¹ Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs, *People Trafficking – Support for Victims* (2009) <<http://www.fahcsia.gov.au/sa/women/progserv/violence/Pages/peopletrafficking.aspx>> at 6 July 2009.

⁷² Brendan O'Connor, Minister for Home Affairs, 'Government Consults on People Trafficking' (Press Release, 24 June 2008) <http://www.ministerhomeaffairs.gov.au/www/ministers/ministerdebus.nsf/Page/MediaReleases_2008_Secondquarter_24June2008-GovernmentConsultsonPeopleTrafficking> at 6 July 2009.

⁷³ The Guidelines are available from the Attorney-General's Department, Australian Government, *Guidelines for Non-Government Organisations working with trafficked people* (2009). <http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_GuidelinesforNon-GovernmentOrganisationsworkingwithtraffickedpeopleandmtilingualfactsheets> at 6 July 2009.

- a federal commitment to the Anti-Slavery Project, Project Respect, the Scarlet Alliance and Australian Catholic Religious Against Trafficking in Humans of \$250,000 each, to provide vital outreach for trafficking victims and conduct education and awareness initiatives on people trafficking.⁷⁴

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be commended for boosting the funding for the anti-trafficking Action Plan and for the work of key anti-trafficking NGOs, for its ongoing commitment to victim support programs, and for the support given to the Roundtable process.

17. Improvements to the Trafficking Visa Regime

17.1. From 1 July 2009, significant improvements to the human trafficking visa regime were introduced.⁷⁵ The reforms address several issues that have concerned trafficking NGOs since the regime was first introduced. The reforms are a direct result of the consultation process, including that established through the National Roundtable on People Trafficking. Support is no longer conditional upon cooperation with the criminal justice authorities, but access to support mirrors the time periods available for certain visa categories. The changes are summarised below.⁷⁶

Visas

- The Witness Protection (Trafficking) (Temporary) Visa has been abolished. Trafficking victims may now be invited to apply for a permanent Witness Protection (Trafficking) Visa, and may include immediate family members both inside and outside Australia on the application. This makes the Witness Protection (Trafficking) Visa more similar to a humanitarian class of visa. Any victim of trafficking may apply for this visa subject to the following conditions: that the Australian Federal Police assess the person to be a victim of trafficking; that the person contribute to an investigation; and that the person is deemed to be at risk if returned home. This visa now addresses the problem of dependent family members being separated from a victim-witness for an extended period. The reforms also remediate the uncertainty previously faced by trafficking victims who could only proceed with permanent visa applications once the two years of the three-year temporary visa had expired.
- The threshold of assistance provision necessary for obtaining a Witness Protection (Trafficking) Visa has been relaxed from those who have made a ‘significant contribution’ to a criminal prosecution or investigation, to those who have made a

⁷⁴ Brendan O’Connor, Minister for Home Affairs, ‘Commonwealth Funding To Combat People Trafficking’ (Press Release, 23 October 2008) <http://www.ministerhomeaffairs.gov.au/www/ministers/ministerdebus.nsf/Page/MediaReleases_2008_FourthQuarter_23October2008-CommonwealthFundingtoCombatPeopleTrafficking> at 6 July 2009.

⁷⁵ The fundamental details of the previous trafficking visa regime were comprehensively discussed in NGO Reports submitted to the CEDAW Committee in preparation for its 34th session: see Women’s Rights Action Network of Australia & anor, *Australian NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women* (October 2005) 17-20, and UNANIMA International, Congregation of Sisters of the Good Shepherd and International Presentation Association, *Australian NGO Shadow Report on the Situation of Trafficked Women in Australia* (23 January 2006).

⁷⁶ See Australian Government, *Australian Government Anti-People Trafficking Strategy: Fact Sheet* (June 2009), available from Brendan O’Connor, Minister for Home Affairs, Tanya Plibersek, Minister for the Status of Women and Chris Evans, Minister for Immigration and Citizenship, ‘Improved Support for Trafficking Victims’ (Joint Press Release, 17 June 2009) <http://www.ministerhomeaffairs.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases_2009_SecondQuarter_17June2009-ImprovedSupportforTraffickingVictims> at 6 July 2009.

‘contribution’. Presumably, a statement made to police for the purpose of gathering intelligence will satisfy this condition.

- Those without a valid visa can be granted a Bridging Visa F (a transitional visa which facilitates an initial investigation so that the Australian Federal Police can determine whether the individual concerned has useful information). This visa is important for those trafficked persons who do not hold a current visa, to regularise their status. It is available to all victims of trafficking, rather than only those who are persons of interest to the police.
- Bridging Visa F of the trafficking processing regime has been extended from 30 days to 45 days. Previously, Bridging Visa F was only valid for 30 days. The extension of this initial phase intends to provide trafficking victims with more time to assess their options (ie whether or not to assist with a criminal prosecution). If necessary, a second 45-day Bridging Visa F may be granted, for those persons who are willing but not able to participate in the criminal justice process. This would assist individuals who are too traumatised to be able to properly assess their options.

Support

- The Trafficking Support Program will be accessible to trafficking victims on any valid Australian visa for a minimum period of 45 days. This represents a more flexible approach to victim support. Previously, only those trafficked persons on certain trafficking-specific visas (Bridging Visa F and the Criminal Justice Stay Visa) were eligible for the program. Trafficked persons were thus being transferred from certain substantive visas they may have had (eg student visas, Working Holiday Maker visa) to trafficking-specific visas, which resulted in a concurrent loss of work and social security rights.⁷⁷
- Trafficking victims who are willing but not able to participate in the criminal justice process may be eligible for a further 45 days of support under the Trafficking Support Program. This is provided on a case-by-case basis, and intends to assist with individuals suffering from conditions such as trauma. This means that continued access to the Trafficking Support program is contingent upon trafficked persons cooperating substantially with criminal justice authorities. If, after 45 (or 90) days, the person does not want to substantially cooperate with authorities, the person will be moved off the program. (He/she may still be eligible, however, for the Witness Protection (Trafficking) Visa and so would be able to access other support services.)
- Formalised 20-day transitional assistance will be provided to individuals leaving the Trafficking Support Program. Until the reforms, this was provided informally.

CEDAW Committee consideration of the issue

17.2. The 2006 Concluding Comments stated in paragraph 21 that:

The Committee further urges the State party to consider the extension of temporary protection visas and reintegration and support services to all victims of trafficking,

⁷⁷ This reform of the trafficking visa regime addresses the concerns raised in a recent audit of the *Action Plan* regarding the inconsistent application of the law in the granting of trafficking visas, particularly where alleged victims already hold substantive visas at the time they are located by authorities. The audit recommended better guidance on the granting of trafficking visas to ensure consistent and equitable decisions. See Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Audit Report No. 30 2008–09 (2009), 15.

including those who are unable or unwilling to cooperate in the investigation and prosecution of traffickers.

17.3. Further, in its recent Concluding Observations, the Human Rights Committee also recommended that Australia:

strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and provide equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.⁷⁸

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be commended for the significant reforms to the trafficking visa regime and access to the Trafficking Support Program, especially to the extent that reforms address long-standing humanitarian concerns about the regime's treatment of trafficking victims.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 6

18. Improving the response to trafficked women

Visa regime

18.1. While several reforms to the visa system proposed by NGOs have been taken into account in the recent reforms, some remain relevant, including:⁷⁹

- the Criminal Justice Stay Visa should be expanded to cover civil proceedings for trafficked persons, in order to provide access to compensation – trafficked women have rarely benefitted from state-based victims of crime assistance schemes available to Australian citizens (under which victims of crime may access compensation even in the absence of a successful criminal prosecution);⁸⁰
- access to specialist support or the Trafficking Support Program for a sufficient amount of time should not be linked to whether a trafficked person is cooperating with or able to assist a criminal justice investigation, but should be based on need;
- referral protocols, or a national referral mechanism, should be developed to better facilitate inter-agency cooperation and comprehensive protection of trafficked persons;
- support and protection is *conditional* and continues to frame the issue of trafficking as one of criminal justice concern rather than of human rights – while the reforms have lowered the standard required to trigger support and protection from 'significant contribution' to needing just a 'contribution' to be made in order to be issued with the

⁷⁸ UN Human Rights Committee, *Concluding Observations*, above n 16, [22]. De-linking the availability of victim support from assistance with criminal proceedings is in line with article 7 of the *UN Protocol to Suppress, Prevent and Punish all Forms of Trafficking in Persons, Especially Women and Children*.

⁷⁹ In particular, we refer to Project Respect, *Submission to the CEDAW NGO Report Project* (24 March 2009); and Australian Human Rights Commission, *Review of Australia's Fourth Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights – Submission to the United Nations Committee on Economic, Social and Cultural Rights* (17 April 2009) (**AHRC ICESCR Submission**).

⁸⁰ Access to compensation is in line with article 6 of the *UN Protocol to Suppress, Prevent and Punish all Forms of Trafficking in Persons, Especially Women and Children*.

relevant Witness Protection Certificate, it remains to be seen how ‘contribution’ is defined in policy and practice; and

- trafficked persons should be able to apply for all categories of visa in their own right, independent of sponsorship by the Australian Federal Police.

Repatriation

- 18.2. There is currently a dearth of information available and no guidelines for police in relation to repatriation procedures for trafficked persons. The Government has implemented the 2006 Return and Reintegration of Trafficking Victims from Australia to Thailand pilot project, however, no formal review of this project has been conducted. The results of an independent review should be made public. Reform of such a program should consider expanding it to trafficked persons from other states, and should allocate funding for local organisations to provide repatriation support.
- 18.3. While the Australian Government recognises that local support is needed for a successful ‘reintegration’ to occur, as long as there is no recognition of the need for financial remuneration and compensation through the criminal justice and repatriation process, trafficking victims are likely to remain indebted or vulnerable to further exploitation.

Other issues

- 18.4. Workers in the field have provided feedback that the Communication Awareness Strategy (noted at paragraph 4.15 of the Australian Government Report) needs to be updated to apply to all forms of trafficking; that any review and development of the strategy should occur in full consultation with relevant organisations; and, that the contact details of relevant organisations should be included in all awareness-raising materials. There is little evidence to demonstrate that the Communication Awareness Strategy has been effective in improving the protection of trafficked women.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be encouraged to use a human rights framework in updating the *Action Plan* as its comprehensive response to trafficking, and to move away from a predominantly transnational criminal justice framework.
- ⇒ THAT the revisions of the visa regime and eligibility to the support program be reviewed after a year of operation to assess whether or not the Australian Government is sufficiently supporting all victims of trafficking, transparency in the way trafficking visas are allocated and revoked, and achievement of its stated protection and prevention objectives and outcomes.
- ⇒ THAT the Australian Government be encouraged to explore legal reform so that compensation is more available to victims of trafficking.
- ⇒ THAT the Australian Government initiate an independent, comprehensive review of all repatriation programs.

19. Approach to support for sex workers

- 19.1. Feedback from our consultations highlighted the particular links between domestic and family violence, homelessness and entry into the sex industry. We note that women engaged in sex work are particularly vulnerable to stigma, discrimination and violence.

- 19.2. We note that the Australian Government takes a regulatory approach to sex work. During our consultations, some women’s organisations highlighted the emphasis of the 2006 Concluding Comments on developing strategies to discourage the demand for prostitution. There was disagreement over whether the most appropriate way to address demand was through the criminalisation or decriminalisation of sex work (refer to ‘Decriminalisation of sex work’ in relation to article 11 at paragraphs 51.1-51.5 below).
- 19.3. Since the introduction of a regulatory approach to sex work in Victoria in 1984, the Victorian Government has also declared the need for exit programs that provide specialist support to women who wish to discontinue sex work (such as access to shelter, health care, legal support, compensation, and access to advice on alternative employment). Funding for such programs has not moved beyond pilot phases.
- 19.4. The peak body representing sex workers in Australia, Scarlet Alliance, is mentioned in the Australian Government Report at paragraph 4.16 but does not receive any core funding to continue its advocacy work on behalf of the sector.

Recommendations proposed for Concluding Comments

⇒ THAT State and Territory governments be commended for providing funding to a range of organisations that make specialist support available to women in the sex industry, and are encouraged to make this funding ongoing.

Article 7: Public participation

For information on Article 7 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

20. Increased numbers of female senior public figures

20.1. Since the last reporting period, there has been an increase in women being appointed or elected to very senior leadership positions. Beyond women occupying the positions of Governor-General and Deputy Prime Minister and the appointment of Australia's first female Anglican bishop,⁸¹ there has since been another appointment of a female Justice of the High Court in February 2009 (which brings that institution's female membership to a record high, being three out of seven judges), and the first elected female State Premier in March 2009 (Queensland).⁸² This rate of women holding senior public office is unprecedented.

21. Representation in Parliament

21.1. We welcome the highest historical rate of female members of the Australian Parliament.⁸³ Currently, 37 of the 150 members (25%) of the House of Representatives (lower house) are women, and 27 of the 76 members (36%) of the Senate (upper house) are women.⁸⁴ We also received positive feedback of the Parliamentary Secretary's particular support of issues concerning people and women with disability. These developments represent some mild progress towards better representation of women's interests in public and political life.⁸⁵

22. Funding of Women's Alliances

22.1. We acknowledge and welcome the funding of sector-specific women's agencies and the funding of four women's Alliances at the Commonwealth level since 2001. We note that the Alliance model is currently under review with a view to improve outcomes in effective advocacy and policy development in working with the whole of the Australian Government, and in undertaking capacity building work among the women's sector.

23. Women's Leadership and Development grants

23.1. We welcome the increase in funding for the 2008 Women's Leadership and Development Grants Program,⁸⁶ which supports innovative programs being developed by national

⁸¹ As noted in the Australian Government Report, above n 62, [5.1].

⁸² See High Court of Australia, 'Current Members of the High Court: Justice Bell' (2009) <<http://www.hcourt.gov.au/bellj.html>> at 6 July 2009; and Anna Bligh, Premier of Queensland, Queensland Government, 'Biography of Anna Bligh: Premier and Minister for the Arts' (2009) <<http://www.thepremier.qld.gov.au/about/bio.aspx>> at 6 July 2009.

⁸³ As noted in the Australian Government Report, above n 62, [5.6].

⁸⁴ Parliamentary Library, Parliament of Australia, 'Women in the 41st Parliament' <<http://www.aph.gov.au/library/parl/41/womennow.htm#sencurr>> at 6 July 2009.

⁸⁵ We also acknowledge the gender assessment trial in the Department of Families, Housing, Community Services and Indigenous Affairs announced by Tanya Plibersek, Minister for the Status of Women (Speech delivered at the 2009 Australian Women's Leadership Symposium, Australian Institute of Sport, Canberra, Australia, 17 June 2009) 4-5.

⁸⁶ Grants of \$2.1 million were allocated in 2008, as noted in the Australian Government Report, above n 62, [5.44].

women's organisations. For example, this Program has funded the CEDAW NGO Report consultations and the production of the NGO Reports. It has also funded a program to establish a Network of Immigrant and Refugee Women of Australia, which has been a valuable development in light of the ongoing lack of a specific Alliance that caters to the needs of women of CALD backgrounds.

Recommendations proposed for Concluding Comments

- ⇒ THAT the positive developments in increased women's representation in senior public office and in the Australian Parliament be welcomed, and the Australian Government be encouraged to consider ways that the increased profile of women in public office can be consolidated and improved.
- ⇒ THAT the Australian Government commit to ongoing funding for a national women's consultative structure (whether this continues to be the Women's Alliances or an improved model resulting from the current review), and to strengthening this model by supporting the development of a formal structure to facilitate the advocacy and policy input of Aboriginal and Torres Strait Islander women and women from migrant and refugee backgrounds.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 7

24. Participation of women with disability

- 24.1. People with disability comprise 20% of the Australian population, with women with disability comprising half this number.⁸⁷ However, women with disability are underrepresented in parliaments and other elected offices across the country – their actual numbers in the community not being reflected.
- 24.2. Voting is compulsory in all Australian jurisdictions. However, women with disability continue to report access barriers to voting. Voting locations and methods are particularly inaccessible for women with vision, hearing, intellectual and mobility impairments. Inaccessible buildings make up the vast majority of polling places, and infrastructure supports are lacking (refer to 'Accessibility to housing and public buildings for women with disability' in relation to article 13 at paragraphs 73.1-73.3 below). Further, responses to barriers posed by voting methods have been inadequate or limited to date – for example, the provision of Braille ballot papers in NSW, and a recent recommendation that a trial of electronically assisted voting be ceased.⁸⁸ In some areas, women with disability are actually exempted from the compulsory voting requirement as a result of difficulties in accessing voting methods – which side-steps a resolution of the underlying access barriers.
- 24.3. The laws governing Federal, State and Territory elections contain clauses that have the ability for people with intellectual disability and/or psychiatric impairment to be arbitrarily excluded from voting. These laws do not presume legal capacity, do not outline who has the power to make judgments about capacity, and do not outline means for having decisions

⁸⁷ Australian Bureau of Statistics, *2003 Survey of Disability, Ageing and Carers: Summary of Findings (Australia)* (15 September 2004) 4.

⁸⁸ The NSW Government, after a ruling from the NSW Administrative Decisions Tribunal (*Fittler v New South Wales Electoral Commission and anor (No 2)* [2008] NSWADT 116), decided to provide Braille ballot papers in a recent local government election. The benefit of this arrangement was still to those able to read Braille, and Braille ballot papers needed to be applied for in advance. The Australian Parliament's Joint Committee on Electoral Matters has recently recommended an end to a trial of electronically assisted voting. The system that was trialled allowed many blind and vision impaired people to cast a secret ballot for the first time in their lives.

reviewed. These clauses have been used to exert control over people with disability living in vulnerable situations.

- 24.4. The current lack of representation of women with disability in elected office and the access barriers to elections, continue to limit the participation of women with disability in public and political life.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments (including local governments) build universal access principles into all aspects of election and voting policy and practice.
- ⇒ THAT all Australian governments fund leadership, development and mentoring programs specifically for women with disability and ensure the integration of women with disability in women's leadership, development and mentoring programs.
- ⇒ THAT all Australian governments reject the recommendation made by the Australian Parliament's Joint Committee on Electoral Matters to end the trial of electronically assisted voting; and to continue to provide access to secret and independent voting through this means.

25. Funding for non-government organisations

- 25.1. In our consultations across the nation, it was clear that non-government and community organisations believe their work is under-funded and under-supported, and that funding levels have been static over many years. This has significant ramifications for advocacy for women's human rights issues in Australia, particularly for groups who are structurally hindered from participating in political and public life. For pay equity issues common to non-government organisations, please also refer to 'Pay equity in the community sector and "feminised" work' in relation to article 11 at paragraphs 45.1-45.2 below.

CEDAW Committee consideration of the issue

- 25.2. In the 2006 Concluding Comments, the CEDAW Committee recommended that the Australian Government 'increase its funding to non-governmental organizations involved in the provision of services for the promotion of women's rights.'⁸⁹

⁸⁹ 2006 CEDAW Concluding Comments, above n 15, [32].

Article 8: International Participation

For information on Article 8 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

26. International development policy and AusAID funding

- 26.1. We acknowledge the Government's responsiveness to community concern about the ban on the expenditure by recipient agencies of aid money on reproductive health services that provide abortion services or information about unsafe abortions, and the removal of the ban from AusAID's Family Planning Guidelines in March 2009.⁹⁰ Since the introduction of the Guidelines in 1996, AusAID funding for family planning activities had been cut by 84%.⁹¹ The Australian Government has recently reversed this trend by allocating an extra \$15 million over four years for family planning and reproductive health activities in the 2009-10 Australian Government Budget.⁹²
- 26.2. We further commend AusAID's increased and targeted focus on gender through the establishment of a Gender Policy and Coordination Section operating in the Asia Division of AusAID. We understand that this Section is intended to act as a gender focal point across AusAID, and that a boost to the staffing of this unit may improve its capacity to fulfill this function (currently the Section is staffed by five personnel).
- 26.3. We also note the commitment of the Government to spend \$250 million over 2008-12 on improving progress towards the Millennium Development Goals in the Asia Pacific region (including gender equality outcomes).⁹³ Further, we applaud the additional \$17 million which was given to UNIFEM for core funding and the \$6.2 million which was given to UNIFEM Pacific for women's leadership programs. We also note the valuable reports with a gender focus sponsored or associated with the Australian Government released over the past year.⁹⁴

27. Australian participation at international forums

- 27.1. Since the change of Federal Government in November 2007, there has also been strong support and a renewed commitment to Australia's participation in the annual Commission on the Status of Women and to fulfilling Australia's reporting obligations under CEDAW and other human rights treaties. In 2009, Australia took a notable leadership role in contributing to the gender equity agenda at the United Nations Commission on the Status of Women. Australia supported the participation of a strong delegation of NGO representatives at the Commission.

⁹⁰ Stephen Smith, Minister for Foreign Affairs, 'Australian Government Committed to Maternal and Child Health in Developing Countries' (Press Release, 10 March 2009). <http://www.ausaid.gov.au/media/release.cfm?BC=Media&ID=9112_7385_8599_9705_8357> at 6 July 2009.

⁹¹ International Women's Development Agency, 'IWDA celebrates changes to AusAID Family Planning Guidelines' (Press Release, 11 March 2009) available from <<http://www.iwda.org.au/au/2009/03/11/family-planning-guidelines/>> at 6 July 2009.

⁹² 2009 Women's Budget Statement, above n 35, 16.

⁹³ Bob McMullan, Parliamentary Secretary for International Development Assistance, 'Maternal health challenges cannot be underestimated' (Press Release, 9 May 2009) <http://www.ausaid.gov.au/media/release.cfm?BC=Media&ID=491_2697_2599_9644_824> at 6 July 2009.

⁹⁴ See, eg, Maternal, Newborn and Child Health Network for Asia and the Pacific, *Investing in Maternal, Newborn and Child Health, the Case for Asia and the Pacific* (2009); and AusAID Office of Development Effectiveness, *Violence against Women in Melanesia and East Timor* (November 2008).

27.2. We also note the strengthening of support for NGO work in this sector, including for Beijing +15 consultations, for UNIFEM Australia, and for the Asia Pacific Breakthrough: The Women, Faith and Development Summit to End Global Poverty, which involves the building of an alliance between faith-based, women's and development organisations.

28. UN Security Council Resolution 1325

28.1. A concern raised at our consultations was the lack of action in Australia to implement Security Council Resolution 1325. This was regarded as a hindrance to Australia's capacity to play its role as a regional peacekeeper. We note that, through a Women's Leadership and Development Program Grant, the Office for Women funded the Women's International League for Peace and Freedom (Australia) to run eight consultation workshops throughout May 2009 in each State and Territory to collect feedback on the development of a national action plan for Resolution 1325, and to conduct research into possible options for the implementation of Resolution 1325. It is understood that the final report on this consultation process will inform the next phase of the development of the national action plan.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government's review of the AusAID Family Planning Guidelines be welcomed.
- ⇒ THAT the Australian Government be congratulated for its revitalised role in international women's policy forums, and their commitment to integrating gender in overseas development assistance.
- ⇒ THAT the Australian Government be congratulated on its collaborative work with NGOs to design options for the implementation of UN Security Council Resolution 1325, and is requested to regularly report on implementation of Resolution 1325 (particularly on gender training of troops and peacekeepers).

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 8

29. Funding for development and gender initiatives

29.1. Although the 2008-09 Australian Government Budget announced a significant increase in Australia's contribution to overseas aid, the 2009-10 Australian Government Budget has been adversely affected by the global economic crisis such that the relative proportion of funding allocated to overseas aid is down from 0.37% of Gross National Income in 2005 to 0.34%⁹⁵ (this continues to fall short of the UN target of 0.7%). We note that the Australian Government is currently considering a goal of 0.5%.

29.2. The Gender Equality Annual Thematic Performance Report for the year 2006-07 noted that over \$62 million was allocated for 'direct expenditure' on gender equality, and that 'indirect expenditure' amounted to over \$600 million (although it is unclear what types of programs are included within this 'indirect expenditure' figure).⁹⁶ Direct expenditure therefore represented 2% of the entire aid budget in 2006-07 (\$2,989.9 million).⁹⁷ We note that the

⁹⁵ See Australian Council for International Development, *Analysis: AID BUDGET 2009/10* (May 2009) 4.

⁹⁶ Australian Agency for International Development, Australian Government, *Gender Equality Annual Thematic Performance Report 2006-07* (February 2008) 19.

⁹⁷ Australian Agency for International Development, Australian Government, *Annual Report 2006-07* (30 October 2007), 223.

entire aid budget for the financial year 2007-08 was significantly increased to \$3,171.8 million,⁹⁸ however, a thematic gender equality report that releases data on the amount allocated to gender initiatives has not yet been released, which means we cannot assess to what extent the increase in AusAID's budget has impacted on gender initiatives.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government continue to pursue a 0.7% target for overseas aid funding, rather than the current 0.5% threshold currently under consideration.
- ⇒ THAT the Australian Government, whilst maintaining its policy of gender mainstreaming in international aid, significantly increase the percentage of the annual aid budget allocated to 'direct expenditure' gender equity activities.
- ⇒ THAT the Australian Government adopt a gender-sensitive reporting procedure so that the types of programs funded by the 'indirect expenditure' category of spending on gender equality, and the extent to which they result in actual integration of gender equity measures into program process and outcomes, is transparent.

30. Clear articulation of gender architecture in Australia's aid program

- 30.1. Concern was expressed at our consultations that AusAID's gender architecture is unclear, hindering the organisation's capacity to effectively mainstream gender issues in its overseas aid programs.
- 30.2. The 2007 policy statement *Gender equality in Australia's aid program – why and how* provides the rationale and approach of gender integration in the aid program. The policy outlines priority areas and sets out how the policy will be monitored, evaluated and results reported.⁹⁹ The priority outcomes defined in the policy are to improve women's:
- economic status;
 - participation in decision-making and leadership;
 - equitable health and education outcomes; and
 - to advance a regional cooperation agenda around gender equality.
- 30.3. These priorities are output and outcome oriented rather than process oriented. The 'mainstreaming' of gender is, however, a process that requires organisations to evaluate their internal mechanisms, and not just their outreach programs and services – thus, for example, a development organisation needs to be able to evaluate its *process* for increasing women's participation in decision-making (or whichever priority outcome is the focus of that organisation). For example, process indicators may consider the degree of rural women and men's inputs into project activities (including labour, tools, money, etc); or, the level of participation as perceived by men and women through the different stages of the project cycle (by sex, age, and socio-economic background). Process-oriented indicators are almost completely missing from AusAID's policy document.

⁹⁸ Australian Agency for International Development, Australian Government, *Annual Report 2007-08* (29 October 2008), 260.

⁹⁹ Australian Agency for International Development, Australian Government, *Gender equality in Australia's aid program – why and how* (March 2007).

Recommendations proposed for Concluding Comments

⇒ THAT AusAID policy strengthen its approach to gender mainstreaming through adopting process-oriented indicators by which programs are evaluated, together with outcomes-focused indicators.

Article 9: Nationality

For information on Article 9 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

31. Improved approach to refugees and asylum seekers, and abolition of the Temporary Protection Visa regime

31.1. Since the change in the Australian Government in November 2007, there have been some significant changes to the policy of detaining refugee applicants who arrive in Australia without a valid visa. The previous policy had led to the detention of a number of men, women and children, for indefinite periods of time. Important changes include:

- an announcement by the immigration Minister of a series of values underpinning detention policy, which included that children and where possible their families would not be placed in an immigration detention centre, and that detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time (although concern remains about children being detained for considerable periods in immigration residential housing or transit accommodation rather than in the community);
- the closing down of offshore processing centres on Nauru and Manus Island, with the remaining asylum seekers in these detention centres being recognised as refugees and resettled in Australia by February 2008;
- abolition of the Temporary Protection Visa (TPV) regime from 9 August 2008, a scheme which was widely recognised as an inhumane and punitive approach to the treatment of asylum seekers and refugees, in favour of a Permanent Protection Visa regime – the TPV regime resulted in long term separation of families due to the inability of the TPV holder to travel or to sponsor family;
- the commissioning of a \$1.1 million feasibility study for the redevelopment of Villawood detention centre (in Sydney), following a commitment to improve immigration detention accommodation;
- exceeding the program target numbers for the 'Woman at Risk' special visa category in the humanitarian migration program;
- developing the Case Management and Community Care Pilot program, which provides assistance to people while their immigration status is resolved, into a permanent program;
- a proposed waiving of detention debts (debts that represent the costs of holding an individual in immigration detention, due to be repaid after determination of the validity of a refugee or asylum seeker claim), introduced in Parliament on 18 March 2009; and
- a proposal to abolish the '45 day rule', which results in asylum seekers not being granted the right to work if they apply for a protection visa after 45 days of arriving in Australia, and to implement work rights reform for asylum seekers.

31.2. Women with children will benefit from these changes in that they will not be detained in immigration detention centres but in alternative detention arrangements. Women without children remain subject to immigration detention, although for shorter periods in accordance with new government policy.

- 31.3. It is noted that the policy of mandatory detention remains. Christmas Island is the site of the key offshore processing centre. Asylum seekers processed here do not have access to provisions of Australian migration law. Women seeking protection are still being detained in immigration detention centres pending resolution of their protection visa applications.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended on its changes to the refugee and asylum seeker processing and accountability system, as well as its abolition of the Temporary Protection Visa regime and commitment to expediently process all current holders of a Temporary Protection or Temporary Humanitarian Visa.
- ⇒ THAT the Australian Government be commended on its proposal to abolish the ‘45 day rule’ and to implement work rights reform for asylum seekers.
- ⇒ THAT the Australian Government abolish all mandatory detention of asylum seekers.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 9

32. Lack of information on women in immigration detention

- 32.1. There is limited information available on gendered aspects of immigration detention and on the treatment of women in on-shore detention centres. Women make up a minority of detainees amongst a majority of men. This raises concern about whether their specific requirements are being met and whether they are being subjected to indirect discrimination. Being detained in a predominantly male environment is inappropriate and likely to be psychologically damaging for women. The Palmer inquiry raised concerns about the treatment of women in immigration detention centres however it is not clear what changes were implemented following this report.¹⁰⁰
- 32.2. The Asylum Seeker Resource Centre has sought material pursuant to freedom of information about women in detention and concluded that there is inadequate attention paid to the situation of women in immigration detention in terms of contractual standards and accountability and the impact of their being detained with a majority of men. Women on Christmas Island do not have access to adequate emergency medical services and gender appropriate support services are unlikely.

Recommendations proposed for Concluding Comments

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

33. Dependency of women’s claims on the family unit

- 33.1. The concern was raised at our consultations that women who seek asylum together with their partners or as part of a dependant family group often do not make their own asylum claims, even if they have valid grounds to do so. Most commonly, family-unit visa applications are made by the male head of family, and other family unit members are dependent on his

¹⁰⁰ Mick Palmer, *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau* (July 2005) 46.

application. Consistent with the process for other visa applications in Australia, the principle of ‘one fails, all fail’ applies in these circumstances.

- 33.2. Although the Australian Government Report states that ‘each person included in an application may make additional claims for protection at any stage of the Protection visa process, including during merits review’, the reality is that the current process and procedure for asylum applications of family units disadvantages women as it assumes a certain degree of agency and autonomy, and does not take account of cultural and other factors which materially affect a woman’s decision to make her own asylum claim.¹⁰¹
- 33.3. Once an application for asylum has been refused in relation to the entire family unit, the woman and other dependant family members are barred from making a new application due to section 48A of the *Migration Act 1958* (Cth). The only recourse available is Ministerial intervention exercised pursuant to section 48B of the *Migration Act* (and this avenue is also problematic – see ‘Women seeking protection and the issue of family violence’ at 34 below.)

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government facilitate a detailed analysis of refugee claims of women in Australia and make disaggregated data on women’s applications for protection visas publicly available, in order to heighten government accountability and to inform appropriate policy and provision of services for women seeking asylum.
- ⇒ THAT the application processes for women seeking asylum as part of a family unit be improved so that women seeking asylum are receiving equality before the law and are able to make their own claims, where appropriate.

34. Women seeking protection and the issue of family violence

- 34.1. The limitations associated with the binding of women’s asylum claims with their family unit’s claim can have a particularly detrimental impact on women who are experiencing or who subsequently experience family violence, and who seek to separate from their partner’s application and lodge an individual application. We note that refugee and asylum seeker women are particularly *vulnerable* to violence and discrimination generally, and are often not aware of all the rights and forms of redress available to them in Australia, leaving them vulnerable to threats from the perpetrator of violence that they will be sent back to their country of origin if the violence is reported. This marginalisation is compounded for women with disability.
- 34.2. While the *Migration Act 1958* (Cth) provides that women who have applied for a partner visa or some economic stream visas (eg an 856 Employer Nomination Scheme visa) may be eligible for permanent residence if the relationship in relation to which the visa application was made breaks down and they can prove family violence, the same provision is not made for women who have invoked Australia’s refugee and asylum seeker protection obligations. Unless a secondary applicant can satisfy the Immigration Minister that they are a refugee in their own right (ie that they have their own protection claims), then they will not be entitled to a Permanent Protection Visa if they are no longer a member of the family unit of the primary applicant at the time of the decision. While the occurrence of family violence may

¹⁰¹ Asylum Seeker Resource Centre, *Submission to CEDAW NGO Report* (March 2009).

form the basis for protection claims under the UN *Convention Relating to the Status of Refugees (Refugees Convention)*, it will not do so in all cases and therefore leaves secondary applicants in the position of having to stay in a violent relationship until the primary applicant is granted protection.

- 34.3. In addition, even where the family violence would potentially form a basis for protection claims, often the relevant claims of domestic or family violence are not raised in a protection visa application, especially where the woman is the secondary applicant. Community organisations reported to us that this may be because women do not perceive family violence as a crime, that they are not aware it may be relevant to refugee claims or because they fear reprisals from their partners – either while they remain in Australia or upon return to their home country if their asylum claim is rejected. It was also raised at our consultations that women who do claim that they have suffered family violence are faced with an onerous burden of proof.
- 34.4. The problem of non-disclosure of relevant family violence claims is compounded by the barring effect of section 48A of the *Migration Act* which means that once the primary applicant's protection visa application has been finally determined and refused a secondary applicant cannot make her own claims for protection (as stated in the Australia Government Report at paragraph 7.6) unless the Immigration Minister has exercised his discretionary powers to allow her to do so under section 48B of the *Migration Act*.
- 34.5. Section 48B of the *Migration Act* provides the Immigration Minister with a non-compellable discretion to allow an asylum seeker to make a second protection visa application where it is in the public interest to do so (eg if there is a change in their circumstances or significant credible new information). Under the *Migration Act*, there is no right to a bridging visa while a request under section 48B is being considered making these women liable to be detained.
- 34.6. Alternatively, an unsuccessful applicant can apply under section 417 of the *Migration Act* for the Immigration Minister to exercise his or her non-compellable discretion to grant permanent residency on humanitarian and public interest grounds. Since the change of Australian Government there has been some improvement in the success of both of these kinds of requests, however the process remains difficult and the ministerial process is lengthy, inconsistent, non reviewable and lacking in transparency and accountability. Further, there is no specific reference in the Ministerial Guidelines to gender based humanitarian considerations.
- 34.7. As a consequence of the legal and procedural limitations elaborated on above, women are staying in violent relationships. Given the leadership the Australian Government has shown on the issue of family violence, the maintenance of these discriminatory provisions seems to be an anomaly. One way to remedy this would be to adopt a model used in New Zealand, whereby each member of an identified family unit lodges a separate initial application, and if one family unit member is successful then the entire family unit is then granted protection. Such a model would be more likely to elicit any relevant family violence (or other gender based) claims for secondary applicants.
- 34.8. In addition, amendments should be introduced to incorporate provisions similar to the family violence provisions that currently exist in Division 1.5 of the *Migration Regulations*. These would enable a secondary applicant who has been the victim of family violence to be granted permanent protection at the same time as the primary applicant even if the secondary applicant is no longer a member of the family unit of the primary applicant at the time of decision.

CEDAW Committee consideration of the issue

- 34.9. In the 2006 Concluding Comments, the CEDAW Committee encouraged the Australian Government to ‘remove the current restrictions on women on temporary protection visas and to revisit the provisions of the Migration Legislation Amendment Act so that women who seek asylum and refugee protection can be considered individually in situations of domestic violence.’¹⁰² While temporary protection visas have been abolished, difficulties remain for women who experience family violence and who have not made their own refugee claim, or who are at a point in the migration processing process at which new claims cannot be raised.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government improve refugee processing procedures so that claims of family violence can be easily made without having to rely solely on Ministerial intervention.
- ⇒ THAT the Australian Government amend the *Migration Act* to enable women invoking our protection obligations to be considered individually in situations of family violence, as in the provisions for the partner migration process; otherwise, THAT the Ministerial Guidelines which guide decision making under section 417 incorporate a broader approach to the issue of gender-based violence.
- ⇒ THAT the Australian Government improve and fund education initiatives targeting refugee women about their right to protection from violence and the redress mechanisms available to them as part of a policy of continued support for post-arrival orientation services (discussed in the Australian Government Report at paragraphs 7.15-7.17).

35. Gender sensitivity in the refugee determination process

- 35.1. The Australian government introduced gender guidelines for the immigration department¹⁰³ in 1996. The Gender Guidelines require updating to fully incorporate developments in refugee law, social attitudes and best practice in relation to women and gender. The Australian government has commenced this process but progress has been slow.
- 35.2. The Australian Government Report notes that the Gender Guidelines are available to decision makers of refugee claims.¹⁰⁴ However, the Gender Guidelines have no binding effect on decision makers. Too often decision makers at both the Immigration department and Refugee Review Tribunal do not have regard to the Guidelines either procedurally or in considering women’s claims under the Refugees Convention. For example, the immigration department often rejects women’s asylum claims without reference to the Gender Guidelines,¹⁰⁵ inappropriate use of male interpreters still occurs from time to time, and the Refugee Review Tribunal inappropriately allocates male Tribunal members to women’s cases and often deals insensitively with gender issues raised by women as part of an asylum claim. Where the Gender Guidelines are referred to, it is often in a cursory manner. The Asylum Seeker Resource Centre cited evidence of this in a letter dated 19 May 2009 received by the Centre from the Principal Member of the Refugee Review Tribunal, which stated that ‘[the immigration department]’s Gender Guidelines do not apply to the Tribunals.’ The Member indicated that the Gender Guidelines were merely a source of

¹⁰² 2006 CEDAW Concluding Comments, above n 15, [23].

¹⁰³ Formally known as the ‘Department of Immigration and Citizenship’.

¹⁰⁴ Australian Government Report, above n 62, [7.7].

¹⁰⁵ Email from Asylum Seeker Resource Centre to CEDAW Project Team, YWCA Australia, 12 June 2009.

assistance to the decision making of the Refugee Review Tribunal and Migration Review Tribunal.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government amend the *Migration Act* to eliminate indirect discrimination against women applicants for protection, and to incorporate women’s gender based harm into the refugee definition (in particular, the incorporation of gender-based violence within the definition of ‘serious harm’, and providing an inclusive, non-exhaustive definition of ‘membership of a particular social group’).
- ⇒ THAT the Australian Government update its Gender Guidelines to reflect best practice in handling the claims of refugee women, and ensure that the Immigration Minister, his or her delegates and department, and the Migration and Refugee Review Tribunals are mandatorily bound to determine claims and frame policy in accordance with the Gender Guidelines.

36. Family reunion

36.1. Where a male member of a family has successfully gained asylum without his family, there is often a lengthy wait for the family living offshore (generally wife and children) to be processed and brought to Australia. Often the wife, children or other dependent family members have been placed at additional risk as a result of the male fleeing to seek asylum though lack of male support and protection. There is significant stress placed on extended families left behind – particularly where there are children with disability, or where a sole parent with disability is left behind to care for children (a common concern in conflict zones and post-conflict communities). Further, the Immigration department has adopted a narrow definition of ‘immediate family member’ under the offshore humanitarian split family provisions, which fails to acknowledge cultural practice of extended family support and ignores the realities of conflict in which this extended support and dependence is a matter of survival.

Recommendations proposed for Concluding Comments

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

Article 10: Education

For information on Article 10 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

37. Proposed reforms to the Voluntary Student Unionism legislation

- 37.1. In July 2006, the *Higher Education Support Amendment (Abolition of Compulsory Up-front Union Fees) Act 2005* (Cth) came into force, with the effect that university students were no longer compulsorily required to take out student union membership or pay services and amenities fees to their student union.
- 37.2. In 2008, the Australian Government consulted with the university sector to review the impact of the Voluntary Student Unionism reforms. The consultation concluded that there had been a negative impact on the provision of amenities and services to university students, with the greatest impact at smaller and regional universities and campuses. The common view was that a 'user pays' model for essential services (including legal, advocacy and counselling services) disadvantaged students from low socio-economic backgrounds who are less likely to have 'ready cash' than others.
- 37.3. The gendered impact of these reforms should also be noted given that female students disproportionately experience the financial constraints associated with studying (as noted under 'Female university student poverty', at paragraphs 39.1-39.3 below). Additionally, the reduced provision of affordable child care or the complete closing of child care services has exacerbated the stress on single mothers endeavouring to further their education, either inhibiting them from commencing a course of study or pushing them out.¹⁰⁶ The severe downturn in sports and club activities is directly linked to a significant drop in women's participation in sports; for example, women's participation in the Australian University Games has dropped from a high of 48% to 40% in 2007 after the introduction of voluntary student unionism.¹⁰⁷
- 37.4. On 11 February 2009, the Minister for Youth announced the *Higher Education Legislation Amendment (Student Services and Amenities Fee, and Other Measures) Bill 2009* (Cth). The reforms will require Government-funded universities, from 2010, to comply with Guidelines that see them provide at least a minimum standard of support services for students,¹⁰⁸ and will implement protocols aimed at improving student participation in university governance structures. They will also allow universities to charge students an optional fee capped at \$250 (which may be paid through the Higher Education Loan Program, rather than being

¹⁰⁶ National Union of Students, 'Women's Rights are not Voluntary' (Press Release, 27 February 2009) <http://unistudent.com.au/home/index.php?option=com_content&task=view&id=134&Itemid=30> at 6 July 2009. The negative impact on child care was also noted in Department of Education, Employment and Workplace Relations, *The Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students: Summary Report* (April 2008) at 5, 28-9, 32-4, 36, 38-9, 41; and in Kate Ellis, 'Second Reading Speech: Higher Education Legislation Amendment (Student Services And Amenities, And Other Measures) Bill 2009', 11 February 2009 <http://www.deewr.gov.au/Ministers/Ellis/Media/Speeches/Pages/Article_090211_133421.aspx> 6 July 2009.

¹⁰⁷ Australian University Sport/Australian Campus Union Managers Association submission, cited in Department of Education, Employment and Workplace Relations, *The Impact of Voluntary Student Unionism on Services, Amenities and Representation for Australian University Students: Summary Report* (April 2008) 9.

¹⁰⁸ The Student Services, Amenities, Representation and Advocacy Guidelines are available at Department of Education, Employment and Workplace Relations, Australian Government, *Support for Student Services, Amenities, Representation and Advocacy* (2009) <http://www.dest.gov.au/sectors/higher_education/policy_issues_reviews/key_issues/VSU> at 6 July 2009.

paid up front) to be spent on necessary services permissible under the Student Services and Amenities Fees Guidelines (which include child care services)¹⁰⁹ and which are identified in consultation with students. The proposed reforms have been criticised for failing to ensure that fees will be directly received by student unions or organisations, as exclusion of the community sector from the process will compromise the representation of women's interests and provision of gender-appropriate services on campus.¹¹⁰

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended for introducing the proposed amendments to the Higher Education legislation which require the provision of some level of student support services on campus in consultation with students.
- ⇒ THAT the Australian Government ensure that student organisations (where they exist) have direct control of the capped general services and amenities fee.
- ⇒ THAT the Australian Government carefully monitor and review the impact of these changes to ensure that the services provided will sufficiently cater for the needs of female students, particularly women from diverse or disadvantaged backgrounds and single mothers.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 10

38. Women bearing disproportionate burden of Higher Education Loan Program debt

38.1. 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 through accumulating a debt through the government loans scheme, now called the Higher Education Loan Program.¹¹¹ If deferred, the repayments are made through the taxation system once students' post-degree income reaches a pre-determined level. In 2003, the government 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, Higher Education Loan Program debts can be a particularly heavy burden. Due to the gendered rates of workforce participation and lifetime disparities in salary earnings, 93% of men will have paid their Higher Education Loan Program debt by the age of 65, in comparison to 67% of women.¹¹²

¹⁰⁹ Ibid.

¹¹⁰ National Union of Students, above n 106; and National Union of Students, 'NUS responds to Guidelines outlining the use of the \$250 Student Services and Amenities Fee' (Press Release, 27 February 2009) available from <<http://unistudent.com.au/home/>> at 6 July 2009.

¹¹¹ The 'HELP' terminology was adopted through legislative changes effective 1 June 2006; previously, the deferred repayment scheme was known as the 'Higher Education Contribution Scheme (HECS)': Department of Education, Training and Science, *Want to know about the changes to HECS & PELS?*, Brochure, circa 2005, available at <<http://www.goingtouni.gov.au/Main/Quickfind/PayingForYourStudiesHELPLoans/Default.htm>> at 6 July 2009.

¹¹² Ann Harding, National Centre for Social and Economic Modelling, *Lifetime Repayment Patterns for HECS and AUSTUDY Loans*, (NATSEM Discussion Paper No 1, 1993) 21.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government take action to address the long-term gender-differentiated impact of Higher Education Loan Program debts.

39. Female university student poverty

39.1. A Universities Australia 2006 Fact Sheet reported on the key findings of a national survey of the financial circumstances of students in public universities.¹¹³ Apart from undergraduates, the three groups identified as under most financial pressure were full-time postgraduate coursework students, female students and Aboriginal and Torres Strait Islander students.

39.2. Among other things, the survey found that female students were:

- more likely to have a budget deficit;
- less likely to have savings for an emergency;
- less likely to have paid course fees up front;
- more likely to be:
 - financially dependent on someone else;
 - two to three times more likely to rely on assistance in the form of cash gifts and help with bills;
 - more likely to rely on free or subsidised services provided by universities and student associations;
 - less likely to believe they could afford such services if they were not subsidised; and
- more likely to have taken out a repayable loan in order to study than were male students; however, male students with loans had borrowed much larger amounts.

39.3. These findings demonstrate that Australian women generally experience more financial pressure than men in undertaking tertiary study, particularly those studying as full-time undergraduate students,¹¹⁴ and that they depend heavily on various forms of financial and other services-based assistance in order for this playing field to be leveled.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government consider budgetary and policy mechanisms to reduce the structural financial pressures of study for female students, including through targeted, flexible, low-interest loan schemes.

¹¹³ See Universities Australia, *Fact Sheet: Australian University Student Finances 2006 Final Report* (August 2007) <<http://www.universitiesaustralia.edu.au/content.asp?page=/publications/policy/survey/index.htm>> at 6 July 2009.

¹¹⁴ Universities Australia, *Australian University Student Finances 2006: Final report of a national survey of students in public universities* (August 2007) <<http://www.universitiesaustralia.edu.au/content.asp?page=/publications/policy/survey/index.htm>> at 6 July 2009.

40. Vocational and educational training outcomes

- 40.1. Accessible, affordable and relevant vocational education and training, along with person-centred career counseling, is of high significance for women seeking to enter or reenter the paid workforce. This is especially so for those with limited qualifications, work experience and labour force attachment, and/or training that has resulted in accredited recognition.
- 40.2. The national policy adopted in 2004 in relation to women's vocational and educational training (VET) participation known as 'Women: Shaping Our Future', resulting from Australia-wide consultations conducted over an 18-month period, is due for expiry of its term for implementation in 2010.¹¹⁵ However, key features of this policy have still not been implemented or resourced.¹¹⁶
- 40.3. Latest data from the National Centre for Vocational Education Research shows enrolments in VET programs through the undertaking of apprenticeships and traineeships are declining among women.¹¹⁷ Nor does participation in VET lead to equitable employment outcomes for many women.¹¹⁸ Women continue to be clustered in 'feminised' areas of study and industry-training programs. Data indicate that women are less likely to drop out once enrolled, but have poorer employment outcomes. These point towards the fact that the VET system is not adequately serving the interests of female students and that bears particularly heavily on disadvantaged students for whom VET should offer a way out of the poverty trap.
- 40.4. Government-commissioned research reports show that whereas women benefit more from degrees, a gendering effect works to negatively impact on employment outcomes for women and girls who undertake apprenticeships. The reports show that socio-economic background only plays a small role in accounting for the differences in occupational status and earnings, indicating that education and training can and do enhance social mobility overall. Therefore, a declining rate of female uptake of apprenticeships (see above) linked with the differentials in employment and wage outcomes between women and men who undertake vocational training, mean that women and girls are being doubly marginalised in this area of the education system.
- 40.5. Further, there is concern that as the Australian VET system moves to a fee based system operating on user pays principles, there is high potential for course fees to impact heavily and negatively on women. This is especially the case as the VET system is primarily provided for through Technical and Further Education (**TAFE**) institutions.
- 40.6. Women and young girls are not visible in the VET system, and so are not being catered for on an equitable basis. Further, there is a lack of appropriate information provided to women

¹¹⁵ The policy is available from the Department of Education, Employment and Workplace Relations, Australian Government, *Women: shaping our future* [an ANTA publication]

<http://www.dest.gov.au/sectors/training_skills/publications_resources/profiles/anta/profile/women_shaping_our_future.htm> at 6 July 2009.

¹¹⁶ See Security4Women, *Towards a Sustainable Economic Future: Women and Vocational Education and Training* (November 2007).

¹¹⁷ National Centre for Vocational Education Research, *Australian vocational education and training statistics: Apprentices and trainees, September quarter 2008* (2009) <<http://www.ncver.edu.au/statistic/publications/2111.html>> at 6 July 2009.

¹¹⁸ See, eg, Hamish Coates and Daniel Edwards, Australian Council for Educational Research, *2008 Graduate Pathways Survey: Graduates' education and employment outcomes five years after completion of a bachelor degree at an Australian university*, Report to DEEWR (April 2009) <<http://www.deewr.gov.au/HigherEducation/Publications/Documents/2008%20Graduate%20Pathways%20Survey.pdf>> at 6 July 2009; Australian Council for Educational Research, 'Uni degrees pay off in workforce, for men more than women' (Press Release, 6 May 2009); Steve Holden, 'Post school pays off' (2009) 8(2) *Professional Educator*, 24-5; Gary Marks, Australian Council for Educational Research, *The occupations and earnings of Young Australians: The Role of Education & Training* (Longitudinal Surveys of Australian youth (LSAY) Research Report 55, November 2008) <<http://www.acer.edu.au/documents/LSAY55.pdf>> at 6 July 2009.

at all stages of their interactions with VET providers and career decision making.¹¹⁹ This makes the VET system particularly difficult for women and girls who experience issues associated with intersectionality (based on dis/ability, location, race/ethnicity, age, etc), including newly arrived women and women who are returning from a period of absence from the workforce, or those requiring retraining.

- 40.7. The National VET Equity Advisory Council (intended to replace the current national advisory structure in 2009) is intended to consider the achievements and needs of equity groups in relation to VET. However, there is no specific focus on women and girls in its mandate or its actions.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government and State and Territory governments update and implement a national vocational education and training policy for women formulated around women-centred principles – in particular, gender equity and inclusiveness – as well as quantifiable key performance indicators and targeted interventions for disadvantaged groups of women, and associated employment outcomes, as a matter of urgency.
- ⇒ THAT a national vocational education and training policy for women with associated strategies be instated no later than 2010, and prior to the expiry date of the current policy *Women: Shaping Our Future*.
- ⇒ THAT the Australian Government work to improve the analysis and reporting of publicly accessible gender-disaggregated data on the performance of the national vocational education and training system as a matter of urgency.
- ⇒ THAT the National Vocational and Education Training Equity Advisory Council include an active and specific focus on women and girls in its mandate and core business, and report on the same.
- ⇒ THAT the Australian Government monitor and evaluate the impact of fees for vocational and education training courses, especially those offered through Technical and Further Education, with due consideration to the impact of such fees on women and girls.
- ⇒ THAT the Australian Government consider budgetary and policy mechanisms to reduce the structural financial pressures of vocational and education training studies.

¹¹⁹ Ibid 16. See also Security4Women, *Lifelong Learning: Work Related Education and Training: Meeting the Needs of Australian Women* (August 2007).

Article 11: Work

For information on Article 11 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

41. Paid Parental Leave

- 41.1. In the 2009-2010 Australian Government Budget, the Australian Government committed to the introduction of a statutory Paid Parental Leave scheme for births and adoptions occurring after 1 January 2011. Paid parental leave will be paid for 18 weeks at the federal minimum wage for workers who have worked continuously for 10 of 13 months before the birth or adoption, and who have worked at least 330 hours in those 10 months. Paid parental leave will be available to contractors, casual workers and the self-employed. The scheme is available for the 'primary carer' which, in theory, enables men to be engaged with caring for their children.
- 41.2. It is unclear yet whether it will be available for parents in same-sex relationships; it is expected this will become evident when the legislation is drafted. The scheme will be means tested, and not be available for those earning over \$150,000 in the financial year prior to the birth or adoption.
- 41.3. The Australian Government has committed to reviewing the scheme three years after its implementation, at which time it will review the decision not to include employer contributions towards superannuation payments or a period of paid paternity leave (as recommended by the Australian Productivity Commission). The superannuation payment is integral to addressing women's lifetime earnings and significantly higher incidence of older women living in poverty. Western European experiences of mandated paid paternity leave have been found to increase the participation of men in caring work for children.
- 41.4. The Australian Government Report, written prior to the budget announcement, stated that it was not yet in a position to remove the reservation to article 11(2) of CEDAW.¹²⁰ The Australian Government should now be encouraged to do so.

CEDAW Committee consideration of the issue

- 41.5. In its 2006 Concluding Comments, the CEDAW Committee expressed its ongoing concerns about the lack of uniformity among work-related paid maternity leave schemes in Australia, the lack of a national system of paid maternity leave, and Australia's reservation on paid maternity leave. It requested that the Australian Government 'take further appropriate measures to introduce maternity leave with pay or with comparable social benefits.'¹²¹

¹²⁰ Australian Government Report, above n 62, [9.36].

¹²¹ 2006 CEDAW Concluding Comments, above n 15, [25].

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be congratulated on the introduction of a Government-funded paid parental leave scheme effective from January 2011.
- ⇒ THAT the Committee seeks assurances from the Australian Government that the paid parental leave scheme will be available for all families, including same-sex families.
- ⇒ THAT the Australian Government be encouraged to introduce employer superannuation contributions and paid paternity leave, as per the Productivity Commission recommendations, after the three year review of the paid parental leave scheme's implementation.
- ⇒ THAT the Australian Government formally remove its reservation on maternity leave in light of the introduction of the paid parental leave scheme.

42. Review of the Australian Taxation System

- 42.1. In 2008, the Australian Government announced a review of Australia's tax system. The purpose of the review is to ensure that the taxation system will enable the Australian Government to respond to the demographic, social, economic and environmental challenges of the 21st century. The Australian Government sought community input in two stages, on retirement incomes and on general matters associated with the taxation system.
- 42.2. The Office for Women funded women's NGOs to ensure that a gendered analysis of the taxation system was put forward. The National Foundation for Australian Women highlighted significant concerns that the conjunction of women's increased workforce participation and reforms to the Australian taxation system have resulted in a taxation system which is discriminatory to women.¹²² Since the 1980s, Australia has moved away from a progressive, individual based income tax system in which families received support for dependent children in the form of universal family allowances. The current system has seen the introduction of income testing for child support payments based on family income (Family Tax Benefit Part A), and also reflects a shift in the rate scale applying to personal income. In terms of a disproportionate impact on women, the National Foundation for Australian Women noted that:
- reforms to the taxation system have increased the relative taxation burden on middle income earners (specifically, two-earner families on low and average wages) while decreasing the relative taxation burden on high income earners – their report called for a taxation system predicated on equitable collection and distribution of taxes; and
 - reforms have diminished the progressive, individual taxation system with one that, for families, particularly penalises the second income earner (most commonly women).¹²³ The current system means that partnered women returning to the workforce both increase the amount of tax collectable by governments, at the same time that they decrease the amount of family allowances, or family tax benefits, governments have to pay out to families. This is a characteristic feature of a 'joint taxation' system.

¹²² See National Foundation for Australian Women and the WomenSpeak Alliance, *Tax Reform, Targeting and the Tax Burden on Women: Submission to the Review of Australia's Future Tax System* (May 2009).

¹²³ Ibid.

- 42.3. The effects of the tax system are to under-value women’s re-entry to workforce participation and discourage women’s long-term attachment to the workforce, especially where their income is and remains secondary to that of their partner.
- 42.4. The National Foundation for Australian Women has argued for an individually based, progressive personal income tax system combined with universal family allowances. They put forward that the tax system should be simple to understand, simple (and therefore more cost effective) to administer, and be fair and transparent. Further, contrary to governments’ usual perception that universal payments are more ‘costly’ than means-tested payments, the Foundation explains that such a redistribution structure can be counter-productive where, for a given degree of income redistribution, a larger welfare loss is generated due to the greater adverse effects on work incentives.
- 42.5. Refer also to ‘Child care funding’, discussed in relation to article 13 at paragraphs 64.1-64.5 below.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be congratulated on the review of the Australian taxation system and for funding women’s NGOs to ensure that the discriminatory components of the current system have been identified.
- ⇒ THAT the Australian Government ensure that reforms to the Australian taxation system address the elements of the current system that are discriminatory in their impact on women’s income.

43. Changes to the industrial relations system – from ‘WorkChoices’ to ‘Fair Work Australia’

Employment agreements

- 43.1. On 20 March 2009, the Australian Parliament passed the *Fair Work Act 2009* (Cth). The *Fair Work Act* is a comprehensive reworking of the *Workplace Relations Act 1996* (Cth) and seeks to dismantle the legislative amendments that were introduced by the former Australian Government known as ‘Work Choices’. The Fair Work Act introduces new national employment standards, modern awards, improved unfair dismissal laws, good faith bargaining rules and an emphasis on collective bargaining.
- 43.2. Under the *Fair Work Act*, there will be no new individual statutory agreements for employment, such as Australian Workplace Agreements. The introduction of Australian Workplace Agreements since 1996 was largely considered by women’s organisations to have had a detrimental impact on female workers, in terms of both levels of salary attainment and a reduction in employee entitlements.¹²⁴ Women on Australian Workplace Agreements earn 60% of male earnings, in comparison to 83% of male earnings under award

¹²⁴ We note that the Australian Government’s response to the List of Issues posed by the Committee on Economic, Social and Cultural Rights acknowledged that increased use of AWAs resulted in a reduction of employee entitlements across the board: Australian Government, *Replies by the Government of Australia to the list of issues (E/C.12/AUS/Q/4) to be taken up in connection with the consideration of the fourth periodic report of Australia (E/C.12/AUS/4)*, UN Doc E/C.12/AUS/Q/4/Add.1 (31 March 2009) [311] (2009 Australian Replies to CESCR).

conditions;¹²⁵ moreover, one academic study found that only 7% of Australian Workplace Agreements contained any work-family measures.¹²⁶

- 43.3. For Australian women, the *Fair Work Act* is a positive shift away from individualised agreement-making towards collective agreement-making. It introduces new awards which will begin on 1 January 2010.
- 43.4. The Australian Industrial Relations Commission will be replaced by a new ‘one stop shop’ to be called Fair Work Australia, which will have narrower powers than those of the Australian Industrial Relations Commission prior to Work Choices. For instance, it will only be able to make new awards in certain circumstances and the subject matter which awards may cover will be restricted to building on ten legislated national employment standards and ten further minimum employment standards. The Australian Industrial Relations Commission is currently in the process of reviewing awards, to ensure that they are more streamlined and comply with these requirements.
- 43.5. The *Fair Work Act* introduces a range of measures which recognise that not everyone is on a level playing field when it comes to negotiating employment conditions. For example:
- Fair Work Australia will be able to compel parties to bargain for industrial agreements in good faith, with powers to fine for breaches and arbitrate disputes.
 - Fair Work Australia will also be able to assist low paid workers with minimal bargaining power to make agreements with multiple employers through compulsory conferences and good faith bargaining orders, and will be able to arbitrate bargaining claims for the low paid. This will particularly benefit female workers, particularly those who work in casual or part-time arrangements and those who face particular structural barriers in the workplace (such as newly arrived migrant women and women with disability).
 - Enterprise bargaining agreements must satisfy the 'better off overall test', which requires that each employee covered by the agreement is better off overall in comparison to the relevant award and that the agreement does not contravene the National Employment Standards.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be commended for establishing a new industrial relations system in which individual statutory contracts are phased out and unfair dismissal rights and minimum standards of employment are strengthened, which will somewhat mitigate the marginalisation of female employees.¹²⁷

¹²⁵ Awards were a key feature Australia’s industrial environment prior to the *Workplace Relations Act 1996* (Cth). Under awards, wages and conditions of work were set through a series of collectively bargained, independently arbitrated awards.

¹²⁶ Prior to the introduction of AWAs, 60% of award dependent workers were women. Thus, advocacy groups found that women were disproportionately impacted by the shift from awards to AWAs. See National Foundation for Australian Women, *What Women Want – A Workshop on the Effect of the Federal Government’s Recent Policy Changes on Women of Working Age: Record of Proceedings* (July 2005) <http://www.security4women.com/WHAT_WOMEN_WANT-FINAL_WORKSHOP_PROCEEDINGS.PDF> at 6 July 2009. This 2005 project was coordinated by the National Foundation for Australian Women, with participation from WomenSpeak, Security 4 Women and the Australian Women’s Coalition. See also Elizabeth Broderick, Sex Discrimination Commissioner, *Submission to the Senate Employment, Workplace Relations and Education Legislation Committee: Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005* (2005) 1.

¹²⁷ See Australian Labor Party, *Forward with Fairness: Labor’s plan for fairer and more productive Australian Workplaces* (April 2007).

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 11

44. Pay equity

44.1. There is clearly still a significant difference in the equality of remuneration between men and women in Australia. In August 2008, Australian Bureau of Statistics data showed that women working full time were earning 83.3% in the male dollar per week, equating to a 16% weekly earnings pay gap.¹²⁸ Women continue to earn much less than their male counterparts throughout their working life, with pay inequity starting at a woman's first entry-level job.¹²⁹ A 2008 report by the Equal Opportunity for Women in the Workplace Agency analysed the pay gap in top earning positions in the Australian Stock Exchange's top 200 companies.¹³⁰ The report found that the overall median pay for women was only 58% of the overall median pay for men.¹³¹ In linking the gender pay gap to embedded cultural stereotypes about gender in Australia, the Agency explains that the gender pay gap:

reflects the low value placed on the work women do, the unequal distribution of overtime and promotional opportunities, the impact of caring responsibilities, the continued reluctance to invest in women through training and development, old fashioned beliefs about women's abilities and roles and the failure to understand the difference between hours worked and outcomes achieved.

Unequal pay is a problem that affects women at all levels of the Australian workforce and its solution lies in overcoming stereotypes and achieving genuine cultural change, both within the workplace, and in society generally.¹³²

44.2. In June 2008, the Australian Government asked the Committee on Employment and Workplace Relations to inquire into and report on pay equity and associated issues related to increasing female participation in the workforce. While the inquiry is still in its consultation stage, it is a welcome development on the issue of fair and equal remuneration and conditions for women.

44.3. The *Fair Work Act* also includes new equal remuneration provisions that allow Fair Work Australia to ensure that there will be equal remuneration for men and women workers for work of equal or comparative value.¹³³ As the *Fair Work Act* has not yet come into force, it is difficult to ascertain how effective these provisions will be enforced in practice.

44.4. Finally, the Minister for Women has recently announced a review of the Equal Opportunity for Women in the Workplace Agency and its underlying legislation, to examine the effectiveness of this legislation in delivery equal opportunity for women and advancing women's equality in the workplace. A key concern of the Minister in calling this review is the apparent ongoing and growing disparity in salaries between men and women.¹³⁴ Under

¹²⁸ See report in AHRC ICESCR Submission, above n 79, 33; and Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 'Pay Equity' (2009) <<http://www.fahcsia.gov.au/sa/women/progserv/economic/pages/payequity.aspx>> at 6 July 2009.

¹²⁹ Samantha Hawley, 'Study exposes executives' gender pay gap', 25 January 2008, ABC News <<http://www.abc.net.au/news/stories/2008/01/25/2146334.htm>> at 6 July 2009.

¹³⁰ Equal Opportunity for Women in the Workplace Agency, Australian Government, *Gender Income Distribution of Top Earners in ASX200 Companies: 2006 EOWA Census of Women in Leadership* (2008).

¹³¹ *Ibid* 9.

¹³² Equal Opportunity for Women in the Workplace Agency, *Submission to the House Standing Committee on Employment and Workplace Relations – Inquiry into Pay Equity and Associated Issues Relating to Increasing Female Participation in the Workforce* (24 September 2008) [32]-[33].

¹³³ *Fair Work Act 2009* (Cth), part 2-7.

¹³⁴ Tanya Plibersek, Minister for the Status of Women, 'Government Announces Review of Equal Opportunity for Women in the Workplace Agency' (Press Release, 1 June 2009) <http://www.tanyaplibersek.fahcsia.gov.au/internet/tanyaplibersek.nsf/content/tp_mr_eecoreview_1june2009.htm> at 6 July 2009.

the current legislation, the Agency only has scope to receive reports from organisations of at least 100 or more employees.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended for establishing a range of inquiries into the ongoing pay inequity between women and men in Australia.
- ⇒ THAT the Australian Government address the findings of such inquiries.
- ⇒ THAT in its review of the Equal Opportunity for Women in the Workplace Agency, the Australian Government expand the scope of the Equal Opportunity for Women in the Workplace Agency's mandate to include organisations of less than 100 employees.

45. Pay equity in the community sector and 'feminised' work

- 45.1. There are ongoing issues in relation to the 'feminisation' of some sectors and professions in Australia. For example, work in the community sector or in professions such as child care have been under-valued as extensions of work that is done in the home/private sphere, with this under-valuing reflected in consistently low salaries.¹³⁵ The community services workforce in Australia continues to be predominantly female (87%).¹³⁶
- 45.2. A recent Queensland Industrial Relations Commission hearing on pay equity resulted in the Commission ordering that Queensland community service workers receive an 18 to 37% pay rise (depending on the applicable salary band), in order for their pay to be comparable to that in the public sector. The Commission stated that:

The nature of care work is considered to be an extension of women's work in the home; an inherent part of mothering. For these reasons community services work is characterised as female. Care work is predominantly performed by women and notions of a vocation remain in career choice and the commitment to service users over and above the industrial needs of the community services workers themselves. The commitment to others is also shown by the sizeable proportion of the workforce holding post-school qualifications but receiving lower gross wages and has proved to be an impediment to bargaining. These characteristics of the community services workforce are likely to stem from the gendered nature of the workforce. Governments have been able to benefit from this through their funding methods which provide funds consistent with award rates of pay. Predominantly male occupations or industries would not have endured award wages as evidenced by the electricity and rail industry workers approach to enterprise bargaining.

The Commission believes that each of the abovementioned factors has a gender or gender associated cause. When considered as a whole a pattern emerges that gender is at the core of present work value of the community services sector. Accordingly, the Commission finds, that based on all of the above the work has been undervalued on a gender basis.¹³⁷

¹³⁵ Business Victoria, *Gender Pay Equity in Victoria – Causes of Gender Pay Gap* (2009) <http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_61632.html> at 6 July 2009.

¹³⁶ *Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others* QIRC (A/2008/5) (6 May 2009) [4.3.1].

¹³⁷ *Ibid* [4.8].

- 45.3. The Queensland Government has committed to increasing funding over four years to address the pay inequity identified by the Commission.

Recommendations proposed for Concluding Comments

⇒ THAT all Australian governments follow the Queensland Government's lead and increase funding to the community service sector so that award rates can be comparable to those in the public sector.

46. Retirement incomes

- 46.1. The pay inequity issues discussed above lead to a long-term disparity in wage-earning power. A recent report shows that if the current patterns of age specific earnings prevail into the future, a 25-year-old man would earn a total of \$2.4 million over the next 40 years, which is more than one-and-a half times the prospective earnings of a 25-year-old woman (around \$1.5 million).¹³⁸ With children, the lifetime earnings over the working life for a man is double that for a woman (\$2.5 million compared to \$1.3 million). However, if they spent their remaining lives childless, men and women would earn nearly the same amount over their working life.¹³⁹ Younger women are also more likely to engage in periods of casual work throughout their working life.¹⁴⁰
- 46.2. A natural consequence of all these factors is a significant disparity in the retirement incomes between men and women. Australia has a compulsory retirement savings scheme, to which percentage-based contributions are made from the income of all employees. Overall, men in each age group throughout each time period have had a higher proportion of large superannuation balances compared with women.¹⁴¹ This pushes more women into sole or significant reliance on the Aged Pension. Further, as Australia's single Aged Pension rate is 60% of the couple pension rate, elderly single female households are at the greatest risk of poverty among the aged population.¹⁴²
- 46.3. Additional factors experienced by culturally and linguistically diverse women (such as lowly-paid work opportunities, and relatively recent participation in compulsory superannuation) also contribute to their further marginalisation from obtaining adequate retirement income.¹⁴³

¹³⁸ AMP.NATSEM, *She works hard for the money: Australian women and the gender divide* (April 2009), 32.

¹³⁹ *Ibid.*

¹⁴⁰ National Foundation for Australian Women, *Submission to the Henry Tax Inquiry: Retirement Incomes* (March 2009), 7 (**NFAW Retirement Submission**).

¹⁴¹ AMP.NATSEM, above n 138, 28.

¹⁴² NFAW Retirement Submission, above n 140, 6.

¹⁴³ *Ibid.*

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government address the gendered disparity in retirement incomes through reforming the Aged Pension and adopting other measures proposed by the National Foundation for Australian Women in its submission to the Inquiry into Australia's Future Tax System.

47. Fair Work Act – flexible working conditions and unfair dismissal

Flexible work conditions and the National Employment Standards

47.1. The *Fair Work Act* introduces ten National Employment Standards which provide minimum standards of employment relating to, among other things, maximum weekly hours of work, the ability of parents to request flexible working arrangements, redundancy entitlements and leave (including personal, annual, long service and unpaid parental leave).

47.2. However, certain shortcomings in the *Fair Work Act* mean that it does not provide comprehensive protection to fair and equal conditions of employment. These limitations include that employers may still require their employees to work 'reasonable additional hours' (which is not an improvement on Work Choices), significant limitations are imposed on the award-making powers of Fair Work Australia, including restricting the allowable subject matters of awards and limiting the making of new awards, and that workers earning over \$100,000 will be excluded from award protection.

47.3. In particular, women with paid work and caring or family obligations will not be better protected by the new regime. One of the National Employment Standards, the right of parents to request flexible working arrangements, lacks any enforcement mechanism, and employers will be allowed to deny the request on 'operational grounds'. Further, this 'right' is only available to parents of pre-school aged children and children with disability, and only after a parent has had 12 months' service with their employer. As a result, many parents are excluded from the limited protection that is provided, and this will negate the ability of the new regime to facilitate employees to balance their work and family obligations. Therefore, the National Employment Standards is not likely to relieve the burden of unpaid and caring work that is disproportionately born by the female workforce.¹⁴⁴

47.4. We commend the Australian Government's Fresh Ideas for Work and Family initiative, which provides grants of \$5,000 to \$15,000 to successful small businesses to implement practices that help employees balance their work and family obligations and improve employee retention and productivity.¹⁴⁵

CEDAW Committee consideration of the issue

47.5. In its Concluding Comments on Australia's third periodic report, the Committee expressed concern, in relation to the *Workplace Relations Act 1996* (Cth), about the impact of laws on rates of part-time and casual work, on women workers' benefits and on workers with family responsibilities.

¹⁴⁴ The disproportionate burden of unpaid caring and family responsibilities born by the female workforce was comprehensively reported in Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, Men, Work and Family* (February 2005).

¹⁴⁵ Department of Education, Employment and Workplace Relations, Australian Government, *Overview: Fresh Ideas for Work and Family* (2009) <<http://www.deewr.gov.au/WorkplaceRelations/FreshIdeas/Pages/default.aspx>> at 6 July 2009.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government strengthen the right to flexible working conditions in the *Fair Work Act* and National Employment Standards.
- ⇒ THAT the Australian Government formally reviews the gender-based impact of the *Fair Work Act* on female workers, particularly:
- whether there are increased or decreased rates of part-time and casual work, the nature of workers' benefits and the impact on workers with family responsibilities; and
 - the impact of the changes on women with disability, Aboriginal and Torres Strait Islander women, women from Non-English Speaking Backgrounds and sole parents.

48. Unfair dismissal and job security

- 48.1. The unfair dismissal provisions in the *Fair Work Act* improve on the very poor protection afforded to workers under Work Choices, but still fail to fully protect women's right to non-discrimination in work. Under the *Fair Work Act*, employees of businesses both small and large will have access to protection against unfair dismissal. However, employees will only be eligible for protection if they earn below \$100,000 and have been employed for at least:
- 12 months, if their employer has fewer than 15 employees; or
 - 6 months, if their employer has 15 or more employees.
- 48.2. The time limit in which an employee may make an unfair dismissal application has been reduced from 21 to 14 days after termination of employment (the initial proposed legislation intended for a 7-day time-limit on unfair dismissal claims, but this was increased in response to community concern). There was concern at our consultations that the 14-day time limit would particularly disadvantage vulnerable groups of women – for example, Northern Territory Working Women's Centre reported that CALD and Aboriginal and Torres Strait Islander women rarely contact their service within such a short time frame after being terminated from employment.
- 48.3. The *Fair Work Act* enables the Government to implement a Small Business Fair Dismissal Code which will apply to small businesses with fewer than 15 employees. Of particular concern is that the current draft Code removes procedural fairness and scrutiny of dismissals for poor performance or serious misconduct (eg if an employer has 'reasonable grounds' to believe the employee is guilty of theft).¹⁴⁶ If a small business employer follows the Code then the dismissal will not be unfair.¹⁴⁷ Thus 'by implication, a dismissal cannot be challenged in such a case, even if the allegation turns out to be unfounded'.¹⁴⁸ How the Code will impact on women who face unfair dismissal on the grounds of pregnancy or marital status is not yet ascertainable; however, it is clear that protection from unfair dismissal is not comprehensively provided for under the *Fair Work Act*.

¹⁴⁶ Ibid. See also the Standing Committee on Education, Employment and Workplace Relations, Senate, Parliament of Australia, *Fair Work Bill 2008 [Provisions]* (February 2009) 72-74 <http://www.aph.gov.au/Senate/committee/eet_ctte/fair_work/report/report.pdf> at 6 July 2009.

¹⁴⁷ 2009 Australian Replies to CESCR, above n 124, [306]. See also Fair Work Online, Australian Government, *A simple, fair dismissal system for small business: Fact sheet* (2009) available from <<http://www.fairwork.gov.au/Termination-of-employment/Pages/Small-Business-Fair-Dismissal-code.aspx>> at 6 July 2009.

¹⁴⁸ Standing Committee on Education, Employment and Workplace Relations, above n 146, 72.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government ensure equal protection to women employees against unfair dismissal, regardless of the size of their employer.

49. Lower workforce participation rate of women with disability

Barriers to workforce participation

- 49.1. In their submission to the House of Representatives Employment and Workplace Relations Committee's inquiry into pay equity and associated issues related to increasing female participation in the workforce, Women with Disabilities Australia observed that 'Australians with a disability are much less likely to be employed than people without a disability' and furthermore '...women with disabilities are at a further disadvantage because of the combined discrimination based on gender and discrimination based on disability.'
- 49.2. In its submission, Women with Disabilities Australia identified a number of barriers to entering employment for women with disability which include:
- lack of understanding of the complexity and nature of disability;
 - lack of access to education and training;
 - inaccessible and unresponsive employment services; and
 - poor job design and inflexible working arrangements.
- 49.3. In a previous policy reform submission, Women with Disabilities Australia elaborated on the following barriers:¹⁴⁹
- Conducting more unpaid work, including parenting and caring activities as well as dealing with the demands of disability, means that women with disability often have less time and energy and are more at risk of ill-health. This makes it difficult to find paid work and meet the demands of paid work or gain satisfaction from paid work. Career progression or further skill development are even more difficult.
 - The lack of accessible childcare centres and outside school hours care makes it extremely difficult for many women with disability to obtain care for their children so they can work. Women with disability may have to travel further and/or pay more to make use of accessible childcare. This situation is especially difficult for children with disability as many childcare centres and outside school hours care options will not accept children with disability or will impose conditions on their enrolment.
 - The family and workplace situations of women with disability make it less likely that they will receive or have access to information about workplace rights, including in relation to sexual harassment and family responsibilities. Many women with disability report knowing less about their work rights as compared to women generally because often this information is produced and distributed in ways that are inaccessible to them.

¹⁴⁹ Women with Disabilities Australia, *Submission to the Human Rights and Equal Opportunity Commission (HREOC) National Inquiry into Employment and Disability* (2005), sections 3-8 <wwda.org.au/employsub2.htm> at 6 July 2009.

- Specialist employment and support services for people with disability and generic family support services do not generally consider the specific requirements of women with disability. These services need to specifically target women with disability and adopt measures to improve employment outcomes. This may require working in collaboration with disability support and family support services to ensure that the unpaid work responsibilities of women with disability are alleviated.

- 49.4. These structural barriers are reflected in the statistics on labour force participation. In 2003, 46.9% of women with disability were in the labour force compared with 59.3% of men with disability.¹⁵⁰ From 1998-2003, the unemployment rate for women with disability remained relatively stable, only dropping from 8.6% to 8.3%, whereas during the same period the unemployment rate for men with disability fell from 13.5% to 8.8% (during this period, the unemployment rates for women and men without disability fell from 8% to 5.3% and 7.7% to 4.8% respectively).¹⁵¹ Of the people with disability assisted to gain employment on the open labour market by Commonwealth Government funded open employment services, 66.6% in 1997-1998 and 65% in 2003 were men with disability.¹⁵²
- 49.5. Disadvantages for women with disability are also evident in the types of employment they achieve. Data from the Australian Bureau of Statistics show that working-age women with disability who are in the labour force are half as likely to find full-time employment (20%) as men with disability (42%); twice as likely to be in part-time employment (24%) as men with disability (12%); and regardless of full-time or part-time status, are likely to be in lower paid jobs than men with disability.¹⁵³ A 2004 Senate Inquiry into Poverty and Financial Hardship concluded that women with disability are also affected by the lower wages paid to women relative to men and are more likely to be in casual jobs with little job security.¹⁵⁴
- 49.6. However, the low labour force participation rate of women with disability compared to men with disability is not reflected in a markedly higher receipt by women of various social security payments,¹⁵⁵ which indicates that there are a number of women with disability whose income support situation is unknown.¹⁵⁶ The gender disparities relating to the paid employment and government payment circumstances of women with disability and men with disability warrants more research in order for governments to formulate appropriate and effective strategies to address the gender dimensions of work and family responsibilities for people with disability.

¹⁵⁰ Australian Bureau of Statistics data, cited in HREOC, *Issues Paper 1: Employment and Disability – The Statistics* (March 2005) 3 <www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm> at 6 July 2009. Rates for women and men without disability are 72.2% and 88.9% respectively.

¹⁵¹ Cited in People with Disability Australia, *Response to Striking the Balance – Women, Men, Work and Family* (October 2005) 3.

¹⁵² Women with Disabilities Australia, above n 149, section 3.

¹⁵³ Australian Bureau of Statistics, 'Labour Force Characteristics of People with a Disability' in *Year Book Australia* (2006); Sue Salthouse, 'Jumping Through Hoops – Welfare and Industrial Relations Reform Implications for Women with Disabilities' (Paper presented at the 'What Women Want Workshop - A Workshop on the Effect of the Federal Government's Recent Policy Changes on Women of Working Age', Canberra, 12 July 2005) <<http://www.wwda.org.au/w2wjuly05.htm>> at 6 July 2009.

¹⁵⁴ Cited in Anne Harding, Quoc Ngu Vu and Richard Percival, *The Distributional Impact of the Welfare-to-Work Reforms Upon Australians with Disabilities* (National Centre for Social and Economic Modelling Paper, 13 September 2005) 12 <<http://www.security4women.com/NATSEMwelfarework-disabledFINAL.pdf>> at 6 July 2009.

¹⁵⁵ The difference is only marginal at 23% for women with disability compared to 20% for men with disability: Sue Salthouse, above n 153. Women represent 44% of all disability support pension recipients, and men 56%: 2009 Women's Budget Statement, above n 35, 5.

¹⁵⁶ Sue Salthouse makes a similar observation about the lower numbers of women on the disability support pension compared to men, yet the higher levels of men with disability in employment: '(w)here are these women and what are they living on?': cited in National Foundation for Australian Women, *Record of Proceedings*, above n 126, footnote 6.

Approach of current Government initiatives

- 49.7. In its 2009-10 Budget, the Australian Government announced a pilot program commencing in March 2010, designed to get more disability support pension recipients into the workforce through offering up to \$3,000 to employers who provide jobs to pension recipients. This payment will be made once the person has been employed for six months and has worked a minimum of eight hours per week. The pilot will also fund additional places in Disability Employment Services. The scope of the pilot covers 1,000 job placements. This pilot is welcome but it does not address the specific structural barriers to employment for women with disability.
- 49.8. The Australian Government is developing a National Mental Health and Disability Employment Strategy as part of its National Disability Strategy (currently being developed). The National Mental Health and Disability Employment Strategy is due to be released towards the end of 2009. The documents from the Strategy that are currently available do not provide any strategic vision or programs that will provide a roadmap to overcome the structural barriers women with disability face in the employment market.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government commission specific research into the gender dimensions of work and family responsibility for people with disability, and use this research to inform the current progress towards its National Disability Strategy.
- ⇒ THAT all Australian governments adopt initiatives to increase employment participation of women with disability and to address the underlying structural barriers to their workforce participation.
- ⇒ THAT the Australian Government be congratulated for the pilot employment program, and be encouraged to provide long-term funding to the pilot employment program if the outcomes of the trial are positive, and to address through additional programs the structural barriers facing women with disability gaining employment.

50. Workplace bullying and sexual harassment

- 50.1. A recent report by the Australian Human Rights Commission into the equality of women in the workplace found that one in five women are subject to sexual harassment in the workplace.¹⁵⁷ Sex Discrimination Commissioner Elizabeth Broderick says the Commission's research reveals 'a significant lack of understanding, among both women and men, about what behaviours constitute sexual harassment.' The report, entitled *Sexual Harassment: Serious Business*, contains a range of recommendations aimed at:

- the prevention, reporting and monitoring of sexual harassment;
- better legal protection from sexual harassment; and
- better support for victims of sexual harassment.

¹⁵⁷ Australian Human Rights Commission, *Sexual Harassment: Serious Business* (October 2008) 1, 11, available from <www.humanrights.gov.au/sexualharassment/serious_business/index.html> at 6 July 2009.

50.2. The prevention of sexual harassment is crucial to protect the equal rights of women.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments and other relevant public and private authorities fully implement the recommendations contained in the October 2008 report of the Australian Human Rights Commission, *Sexual Harassment: Serious Business*.
- ⇒ THAT women's employment legal services be funded to educate the community and conduct advocacy on the issue of sexual harassment in the workplace.

51. Decriminalisation of sex work

- 51.1. Sex work is predominantly regulated at a state/territory level. There are three different approaches within Australia: decriminalisation (NSW), regulation (Tasmania, ACT, NT, Queensland, Victoria and WA), and criminalisation (South Australia). Laws covering sex work are found in a range of different places: criminal codes, health regulations, police legislation and sex-work-specific legislation.
- 51.2. Sex worker organisations argue that criminalisation of sex work has a disproportionate impact on women sex-workers, and results in women not reporting violence for fear of investigation and prosecution into their own work. Criminalisation also militates against sex workers working in an environment that enforces appropriate occupational health and safety protections, or sex workers being supported in reporting crimes committed against them. One organisation reported the case of a sex worker who had reported a crime that was not investigated due to a lack of evidence; however, her own participation in sex work was then investigated and scrutinised by the authorities.
- 51.3. Sex worker organisations also point out that the application of the regulatory approach can result in discriminatory outcomes for women. For example, sex workers in Queensland and Victoria are subject to mandatory testing for sexually transmitted infections, resulting in high rates of surveillance by regulating authorities that are experienced by women as invasive.
- 51.4. In September 2008, an HIV-positive sex worker in the ACT was jailed by a magistrate for contravening section 25 of the *Prostitution Act 1992 (ACT)* as she had worked while HIV-positive. Her actions would not have been considered illegal just over the border in New South Wales. This incident was followed by a statement from the ACT Attorney-General that criminalisation of HIV-positive sex workers was out of step with current knowledge about the transmission risks of HIV, and that the ACT law would be reviewed in light of this.¹⁵⁸
- 51.5. Another example of the discriminatory impact of regulation reported to us was of a pregnant sex worker who lived and worked on the same street and was subject to bail conditions that prohibited her from stopping anywhere on the street. This meant she needed to walk to the next block to use public transport or a public phone.

¹⁵⁸ Scarlet Alliance, 'Decision to jail HIV positive sex worker by ACT magistrate John Burns appalling, says Australian Sex Workers Association' (Press Release, 16 September 2008) <http://www.scarletalliance.org.au/media/News_Item.2008-10-06.3917> at 6 July 2009.

Recommendations proposed for Concluding Comments

- ⇒ THAT the South Australian Government decriminalise sex work.
- ⇒ THAT the Victorian and Queensland governments repeal mandatory health tests of sex workers.

Article 12: Health

For information on Article 12 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

Refer to the discussion of rural women's health needs in relation to this article at paragraphs 79.1-79.12 below.

POSITIVE DEVELOPMENTS

52. National Women's Health Policy

- 52.1. We congratulate the Australian Government on its commitment to a new National Women's Health Strategy.
- 52.2. We commend the Government's recognition of the social determinants of health in its *Development of a New National Women's Health Policy Consultation Discussion Paper 2009*. We also commend the recognition of the need for gender equity in health and the need to address health inequities between Australian women.
- 52.3. We are hopeful that the new National Women's Health Strategy will be committed to rectifying health inequities between *women*, particularly through identifying the specific health needs and issues of women from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander women, and women with disability.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be commended for its commitment to a new National Women's Health Strategy.

53. Incorporation of women's health indicators and the Public Health Outcomes Funding Agreements

- 53.1. Since the last NGO Report under CEDAW, the Council of Australian Governments (a meeting of the Australian, State and Territory governments) has entered into the Intergovernmental Agreement on Federal Financial Relations, effective from 1 January 2009, which includes a National Healthcare Agreement.¹⁵⁹ The negotiations between the Australian, State and Territory governments has impacted the way certain 'special purpose payments' are made, of which the Public Health Outcomes Funding Agreements are one category.
- 53.2. The Public Health Outcomes Funding Agreements provided broadbanded and specific purpose funding from the Australian Government to the States and Territories for a range of public health programs. Previously, advocates for women's health had successfully lobbied for the inclusion of indicators on inequities and risk factors that are particularly pertinent to

¹⁵⁹ See National Healthcare Agreement, Intergovernmental Agreement on Federal Financial Relations, Schedule F (2009), available from <http://www.coag.gov.au/intergov_agreements/federal_financial_relations/index.cfm> at 6 July 2009.

women's health (including gender-specific tobacco and alcohol programs, nutrition and sexual and reproductive health programs), alternative birthing, and female genital mutilation education and prevention. The incorporation of women-specific indicators in the funding agreements was maintained in the 2006 round, and family planning funding was incorporated into that agreement.

- 53.3. However, with the advent of the National Healthcare Agreement, the funding agreements have now been encapsulated into a larger funding program between the Australian, State and Territory governments. The current communications received by women's health services are unclear as to whether the specific requirements and key performance indicators previously required under the funding agreements will be a feature of this new arrangement. That is, there is uncertainty over whether State and Territory governments will be required to report on gender-specific indicators or women's health outcomes, and on the provision of women's reproductive and sexual health programs and services. The incorporation of accountability mechanisms that include a gender focus is essential to the maintenance of stand-alone women's health services.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments ensure that women-specific health indicators such as those that were in the Public Health Outcomes Funding Agreements be maintained under the current funding arrangements.
- ⇒ THAT the continued funding of stand-alone women's health services be welcomed as a great achievement.
- ⇒ THAT all Australian governments reinstate the requirement that State and Territory governments provide for women's reproductive and sexual health services.

54. Reproductive health – some improved access

- 54.1. Abortion law reform in the last 11 years has strengthened women's right to access safe and legal abortions, particularly in Western Australia (1998), Tasmania (2001) and, in the period since the last review, in Victoria (2008). In 2002 the ACT removed all references to abortion from its Criminal Code. Emergency contraception, or the 'morning after' pill, is available for over-the-counter, non-prescription purchase, for women and girls over the age of 14, increasing its availability as an emergency contraceptive (although we note that access to emergency contraceptive is still limited throughout regional towns and centres, with some women having to travel to hundreds of kilometers in some cases for access). Since the last review, the Australian Government has authorised individual doctors to use RU486 (mifepristone), however, actual access to this remains limited (see below in relation to reproductive health under 'challenges to the implementation of Article 12').

55. Health services infrastructure for women with disability

- 55.1. The Royal Australian College of General Practitioners has worked collaboratively with the disability sector and the Australian Human Rights Commission to address the lack of height adjustable examination tables in general practice. In 2007, the College included in their Standards for General Practitioners a provision for height-adjustable examination tables as a best practice item for the accreditation of general practices. However, at this stage, the provision is not mandatory.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 12

Australia was ranked 13th for public expenditure on health in a 2006 listing of OECD members.¹⁶⁰ 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.

56. Reproductive health – decriminalisation and access to medical termination services

56.1. In Australia more than 80,000 women access termination of pregnancy services each year.¹⁶¹ The legal regime that applies to termination of pregnancy is complex and varies between state and territory jurisdictions. This creates confusion both in the medical sector and the wider community as to the legal status of abortion. In terms of the criminalisation of abortion, we report as follows:

- The ACT and Victoria are the only states to have fully decriminalised abortion.¹⁶²
- All other states contain provisions on abortion in their criminal law (in four jurisdictions laws are still based on the United Kingdom's *Offences Against the Person Act 1861*).
- The criminal legislation in SA, the NT, WA and Tasmania prescribes the conditions which must be met for an abortion to be 'lawful'. In all circumstances, conditions relate to perceived risk to the woman, and in some cases where there is foetal disability. In Tasmania, a woman who self-administers her own abortion is guilty of a crime.¹⁶³
- In NSW and Queensland, the starting point under criminal legislation is that abortion is illegal, and women must rely on common law interpretations of the criminal law to make abortion available – that is, the procedure is a crime *unless* the defence that abortion is necessary to prevent serious danger to the woman's physical or mental health can be invoked.¹⁶⁴ The punishment for abortion includes imprisonment, which may be imposed either on a medical practitioner or the patient. There is a low rate of prosecution as authorities turn a 'blind eye' to the practice of abortion and its criminalisation under Queensland law.¹⁶⁵ However, we note a case currently being litigated in Queensland in relation to a 19-year-old woman and her partner charged with the offence of procuring an abortion, for allegedly importing an abortion drug and successfully using it to terminate a pregnancy – the first time such charges have been laid in 50 years. She faces seven years imprisonment if convicted, and her partner three years for helping her obtain the drug. Queensland doctors are now concerned their patients will be similarly targeted.¹⁶⁶
- Young women face additional barriers to accessing abortion, particularly if they are under 16, as parental/guardian consent may be required.

¹⁶⁰ Organisation for Economic Co-operation and Development, 'OECD Health Data 2008 - Frequently Requested Data' (2009) <http://www.irdes.fr/EcoSante/Download/OECDHealthData_FrequentlyRequestedData.xls> at 6 July 2009.

¹⁶¹ Children by Choice, *Submission to CEDAW NGO Report* (2009) [2].

¹⁶² Abortion was recently legalised in Victoria by the *Abortion Law Reform Act 2008* (Vic). We note that the *Abortion Law Reform Act* amended the *Crimes Act 1958* (Vic) so that abortion is still a crime where performed by someone who is not qualified.

¹⁶³ *Criminal Code 1924* (Tas) s 134(1).

¹⁶⁴ See *Criminal Code 1899* (Qld), ss 224-6; *Crimes Act 1900* (NSW), ss 82, 83 and 84. In New South Wales, courts have held that a doctor may take into account 'economic or social stress' of the time when considering the mother's 'mental health': Levine J, cited at Children by Choice, *Australian Abortion Law and Practice* (2009) <<http://www.childrenbychoice.org.au/nwww/auslawprac.htm>> at 6 July 2009.

¹⁶⁵ *Ibid.*

¹⁶⁶ Andrew Fraser and Sean Parnell, 'Anna Bligh flouts state ALP policy to pursue abortion-drug charge', *The Australian* (Sydney, Australia) 12 June 2009 <<http://www.theaustralian.news.com.au/story/0,25197,25623585-23289,00.html>> at 6 July 2009.

- 56.2. In 2006, one abortion practitioner was convicted of two counts of illegal abortion after failing to inquire as to whether a lawful reason for performing the abortion existed. This follows prosecutions in Queensland in 1985 (Drs Bayliss and Cullen, acquitted), Western Australia in 1998 (Drs Chan and Lee, charges dropped by Director of Public Prosecutions after abortion law was reformed in that state), and the prosecution of two Victorian doctors after performing a termination for a woman who was ‘acutely suicidal’ after discovering her fetus had dwarfism at 31 weeks gestation.
- 56.3. The rules that apply to the time during which termination of pregnancy is available also depend on the jurisdiction in which a woman resides. In three jurisdictions, abortions are commonly available at up to a period of 20 weeks’ gestation (NSW, SA, WA) and up to 18 weeks in Queensland. In Tasmania and the Northern Territory abortions are commonly available up to 14 weeks. In the ACT, abortion is available up to 12 weeks. In Victoria, abortions are available up to 24 weeks, and after 24 weeks may only be conducted if the medical practitioner considers it reasonable in the circumstances (including physical, psychological and social factors) and this decision is supported by another medical practitioner.
- 56.4. Abortions after these time frames are increasingly subject to a strict and cumbersome set of procedures. For example, in the ACT, termination after 12 weeks is subject to review by an ethics panel of doctors. 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.¹⁶⁷
- 56.5. Access to abortion is limited by financial constraints. For example:
- Although Medicare (a government-funded health care scheme) provides funding for termination of pregnancy in the form of a rebate,¹⁶⁸ Children by Choice note that this rebate does not cover the full costs of service provision (including licensing, accreditation and nursing staff costs). As such, many women must pay between approximately \$320 to \$810 for a first trimester abortion, and from \$400 for a second trimester abortion. In the greater Brisbane region, women’s out of pocket expenses start at \$300, and for regional Queensland the minimum is \$550. This does not constitute equal access to termination of pregnancy services.
 - Over 80% of abortion procedures are carried out in private day facilities, for which the out of pocket expenses are even more prohibitive.
- 56.6. Women on low fixed incomes find that meeting these costs within the short timeframe in which they need to access termination of pregnancy services is extremely difficult. Only a few agencies are able to offer limited financial assistance to women who are already financial stressed, and generally not enough assistance to cover the entire shortfall between the Medicare rebate and the cost of the procedure.

¹⁶⁷ Children by Choice, above n 164.

¹⁶⁸ Medicare Item number 35643.

56.7. Place of residence also has a tremendous impact on access to abortion. For example:

- In Queensland, abortions are only available in private clinics and not through the public health system.¹⁶⁹
- In all other states/territories, abortions are available in private clinics and to a limited degree in public hospitals. Usually these public hospitals are located in capital cities, and availability of the procedure is generally restricted as demand outstrips the supply.
- For the most part, private clinics are located in capital cities, posing difficulties for rural and remote women, and for women with disability.
- In South Australia, only women who declare themselves to be South Australian permanent residents can access medical services for termination. They must have been residents for at least two months before the abortion. This can have an absurd outcome for women who live closer to Adelaide, South Australia's capital city, than they do to other capital cities. An example that was reported at our consultations was that, in order for a woman from Wilcannia (a remote town in north-western New South Wales) to access termination of pregnancy services, she is likely to need to undergo a 10-day travel route to Melbourne and back.
- 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 rural and remote areas, where there already a scarcity of available health services (see 'Availability and Accessibility of Health Services' discussed in relation to article 14 at paragraphs 79.1-79.12 below), there is greater scope for the personal value system of medical practitioners to impact on access to termination of pregnancy. A 2004 survey of 2,500 GPs across Australia found that, although most identify with a pro-choice position, 20% nationally and 26% in Queensland declare themselves 'anti-abortion', and 37% of GPs nationally do not feel they fully understand abortion laws in their state.¹⁷⁰

56.8. This last point in particular may be an emerging issue in Victoria. Decriminalisation of abortion in Victoria was enacted with 'conscientious objection' provisions that permit medical professionals (including GPs, nurses and pharmacists) to refuse to provide information or services to a pregnant woman on conscientious objection grounds (this is also the case in the ACT). The provisions also require that the medical professional refer the woman to a medical professional who does not have a conscientious objection.¹⁷¹ Recently, the Australian Medical Association Victoria has released a 'conscientious objection template' that states that '[w]e do not wish patients who are seeking these services to suffer embarrassment or emotional upset... We ask that you respect Dr [INSERT NAME]'s beliefs by not requesting abortion services from him/her, as they are against his/her conscience.'¹⁷² We are concerned that this 'conscientious objection template' may particularly inhibit the access of women to termination of pregnancy services where the availability of medical professionals is irregular or scarce, particularly in rural, regional and remote areas (refer to

¹⁶⁹ In Queensland, there are free-standing private clinics in the Gold Coast, Brisbane, Sunshine Coast, Rockhampton, Townsville and Cairns.

¹⁷⁰ Marie Stopes International (Australia), *General Practitioners: Attitudes to Abortion* (November 2004).

¹⁷¹ We note, however, that there are no provisions in the legislation for public authorities to enforce the requirement to refer; and that presumably, this issue is left to professional bodies and associations to encourage and enforce among medical professionals.

¹⁷² AMA Victoria, *Conscientious Objection Template* (2009), available from available at <http://www.amavic.com.au/page/Media/Objections_template/> at 6 July 2009.

‘Availability and Accessibility of Health Services’ discussed in relation to article 14 at paragraphs 79.1-79.12 below).

- 56.9. Although the Australian Government authorises the use of RU486 (mifepristone) on the application of individual doctors, there remain severe limitations on its use as doctors are subject to state/territory law. For example, in Queensland, doctors who are permitted to prescribe RU486 may only do so in ‘life threatening or otherwise serious situations’.¹⁷³ Limited access is again an issue in regional and remote areas – in far north Queensland, two doctors were granted the right to prescribe the drug in 2006, but recently ceased to offer medical abortion in light of the prosecution of the young Queensland woman charged with procuring an abortion (noted above at paragraph 56.1).¹⁷⁴ Doctors are concerned that their patients may also be targeted and appear to be waiting on the resolution of the position under Queensland law on abortion.
- 56.10. The Australian Government put aside \$52 million in 2006 for the development of a National Pregnancy Helpline and Medicare-funded pregnancy counselling services from doctors, psychologists and social workers. However, these services have been underutilised and the Pregnancy Helpline has been criticised for not providing sufficient or accurate information.¹⁷⁵ The Australian Government has announced in the 2009-10 Australian Government Budget that the Helpline will be expanded to offer information for all pre- and post-natal issues, including breastfeeding, and stillbirth, but it is unclear if the pregnancy counselling component will remain.

CEDAW Committee consideration of the issue

- 56.11. 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.

Recommendations proposed for Concluding Comments

- ⇒ THAT the decriminalisation of abortion in Victoria be welcomed.
- ⇒ THAT all State and Territory governments decriminalise abortion, and move to adopt harmonious laws related to termination of pregnancy across jurisdictions.
- ⇒ THAT the Australian Government increase funding for termination of pregnancy, to address the growing gap between the Medicare Rebate and the cost of service provision, including through increasing the level of rebate available through the Medicare system.
- ⇒ THAT all Australian governments examine schemes to address the barriers to access of sexual health services and education faced by women in rural, regional and remote areas.
- ⇒ THAT the Australian Government liaise with State and Territory governments to increase access to RU 486 and take positive steps to support its sale in Australia.

¹⁷³ Children by Choice, above n 161, [2].

¹⁷⁴ Caroline de Costa and Michael Carrette, ‘The abortion law reform saga continues in Queensland’, 12 June 2009 <<http://www.crikey.com.au/2009/06/12/the-abortion-law-reform-saga-continues-in-queensland/>> at 6 July 2009.

¹⁷⁵ Children by Choice, above n 161, [5].

57. Reproductive Health – sexually transmittable diseases

- 57.1. Sexually transmitted infection rates are increasing in Australia. Beyond the 43% increase in the number of new HIV diagnoses between 2001 and 2007,¹⁷⁶ gonorrhoea, syphilis and chlamydia are also rising sharply in infection rates, particularly among young sexually-active people. The increased incidence of chlamydia in young women is of particular concern given the disease can cause infertility if left untreated.
- 57.2. Lack of sexuality education in schools in most states of Australia is likely contributing to this recent rise in sexually transmitted infection rates, and should be remedied immediately. A national sexuality education curriculum would also help to address the relatively high rate of teenage pregnancy and abortion in Australia. Strategies such as the national campaign to target sexually transmitted infections launched on 29 May 2009¹⁷⁷ should actually be incorporated into a more comprehensive health strategy that addresses all facets of reproductive health (such as the National Sexual and Reproductive Health Strategy being touted by the Public Health Association of Australia and Family Planning Australia).¹⁷⁸

Recommendations proposed for Concluding Comments

- ⇒ THAT the steps taken by the Australian Government to address the increases in Sexually transmitted infections in Australia be welcomed.
- ⇒ THAT the Australian Government introduce a National Sexual and Reproductive Health Strategy, including a national curriculum on sexual health, and better training of general practitioners and health professionals in the provision of youth-based sexual health services.

58. Mental health

- 58.1. Women's experiences of mental health is a major public health issue, however, the Australian Government Report does not discuss mental health in gender-specific terms, except in the context of peri-natal depression, which is only one factor of many contributing to Australian women facing mental health issues.¹⁷⁹ This is indicative of the invisibility of gender and women's specific health needs in key Australian public health policies.¹⁸⁰
- 58.2. Mental disorders are a leading disease group among women, especially depression and anxiety. For example, one in four Australian women will experience depression over the course of their life, compared to one in six men.¹⁸¹ These disorders must be understood in the *social* context of women's lives, as well as in a biological context; that is, women more commonly experience violence (whether physical/emotional/sexual); women bear a disproportionate burden of caring and unpaid work, even where they are simultaneously undertaking paid work; there are higher rates of female poverty and financial insecurity; and, marginalisation and discrimination on the basis of race or sexual orientation are also leading

¹⁷⁶ As noted in the Australian Government Report, above n 62, [10.55].

¹⁷⁷ Nicola Roxon, Minister for Health and Ageing, 'Campaign Targets Sexually Transmitted Infections' (Press Release, 29 May 2009) <<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-nr-nr074.htm>> at 6 July 2009. The campaign has been funded with \$9.8 million to particularly combat a rise in chlamydia, HIV/AIDS and syphilis infections.

¹⁷⁸ Public Health Association of Australia and Family Planning Australia, *Time for a national sexual & reproductive health strategy: A call to action* (2009) <http://www.phaa.net.au/documents/SRH_call_to_action.pdf> at 6 July 2009.

¹⁷⁹ Australian Government Report, above n 62, [10.45].

¹⁸⁰ Women's Health Victoria, *Gender Impact Assessment: Depression* (August 2007) 9.

¹⁸¹ Women's Health Victoria, *Gender Impact Assessment: Mental Health* (October 2007) 4.

factors.¹⁸² Further, depression in women tends to be under-diagnosed, and treated differently – in undergoing treatment for depression, women are significantly more likely to be prescribed antidepressant drugs, sleeping pills and vitamins.¹⁸³

- 58.3. In September 2008, a Senate report on mental health services made two key recommendations with gendered implications.¹⁸⁴ Firstly, the Committee recommended that a taskforce be convened to assess the relationship between the experience of childhood sexual assault and the development of mental illness, and to guide the implementation of programs for adult survivors. Secondly, the Committee recommended that the Australian, State and Territory governments jointly support a national Borderline Personality Disorder initiative (which is significant as women comprise the vast majority of those diagnosed with Borderline Personality Disorder).

Recommendations proposed for Concluding Comments

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

59. Safety of women in psychiatric care

- 59.1. A concern expressed at our consultations was the risk of sexual assault and abuse for women patients in psychiatric wards. There is a lack of firm policy and appropriate infrastructure in psychiatric hospitals and wards to ensure women's safety. A 2006 survey of consumers conducted by the Victorian Women and Mental Health Network found that 61% of those surveyed had experienced harassment or abuse in hospital, and 51.5% stated they would prefer women-only wards. A strong majority of mental health staff reported that harassment and abuse does occur wards. This is significant as somewhere between 50% and 70% of women inpatients have experienced past physical or sexual abuse, including child sexual assault – these women are likely to be re-traumatised by their experience in a mixed psychiatric ward.¹⁸⁵
- 59.2. In response, the Victorian Women and Mental Health Network has called on State governments to replace a policy of mixed psychiatric wards with a policy that provides patients with choice between mixed and single-sex wards, and that this policy be implemented in hospital management and design guidelines and procedures, including providing for separate sleeping and recreation areas, and female-only corridors.¹⁸⁶

¹⁸² See *ibid* 4-5. See also Women's Health Victoria, *Gender Impact Assessment: Depression* (August 2007) 3-5.

¹⁸³ Women's Health Victoria, *Gender Impact Assessment: Depression* (August 2007) 5.

¹⁸⁴ Standing Committee on Community Affairs, Senate, Parliament of Australia, *Towards recovery: mental health services in Australia* (25 September 2008).

¹⁸⁵ Victorian Women and Mental Health Network, *Nowhere to be safe: Women's experiences of mixed-sex psychiatric wards* (April 2008) 4-5.

¹⁸⁶ *Ibid*.

Recommendations proposed for Concluding Comments

- ⇒ THAT the risks to health and safety of women in psychiatric wards due to current State Government policy is concerning.
- ⇒ THAT the Australian Government amend the national guidelines governing hospital design to ensure choice between mixed and single-sex treatment environments.

60. Bulk-billing and funding for medical services

- 60.1. Women are disproportionately impacted by the increasing costs associated with health care in Australia. Australia has a system of universal tax-funded health insurance, first introduced in 1972 and re-launched in 1984 as Medicare. The government, through the Medicare Benefits Schedule, 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.¹⁸⁷
- 60.2. During the reporting period, the rate of GP ‘bulk-billing’ (the practice where doctors charge only the Medicare Rebate for their services), sitting at just over 78%, has still not regained the levels seen in 1996 of just over 80% of GPs.¹⁸⁸ A recent drop in the bulk-billing rate, the largest since 2003, has been linked to the current economic recession and increased costs of providing care.¹⁸⁹ Where doctors do not bulk-bill, they are likely to charge significantly more for medical services than the schedule fees.¹⁹⁰ 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.
- 60.3. What this means in real terms is that there is reduced and uneven access to GP services. The lowest bulk billing rates in Australia are found in the ACT (50.6%) and Northern Territory (61.9%), a rate that is worrying given the particularly low health outcomes in that jurisdiction.¹⁹¹
- 60.4. 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.¹⁹²

¹⁸⁷ We acknowledge that the Australian Government recently introduced legislation that will, from 1 November 2010, expand the coverage of the Medicare Benefits Schedule and Pharmaceutical Benefits Scheme to nurses and midwives (in certain circumstances), improving access to the services of nurses and midwives, and that this intends to improve the available choices for maternity care services: Nicola Roxon, Minister for Health and Ageing, ‘Historic Step Forward for Midwives and Practitioners’ (Press Release, 24 June 2009).

¹⁸⁸ Adam Cresswell, ‘Medicare bulk-billing rate falls as GP numbers dwindle’, *The Australian* (Sydney, Australia) 15 November 2008 <<http://www.theaustralian.news.com.au/story/0,25197,24654259-23289,00.html>> at 6 July 2009.

¹⁸⁹ Australian Medical Association, ‘Is This the Start of the Bulk Billing Recession?’ (Press Release, 14 November 2008) <<http://www.ama.com.au/node/4348>> at 6 July 2009.

¹⁹⁰ Mark Metherell, ‘GP fees soar when bulk-billing scrapped’, *Sydney Morning Herald* (Sydney, Australia) 13 February 2003 <<http://www.smh.com.au/articles/2003/02/12/1044927663757.html>> at 6 July 2009.

¹⁹¹ Nicola Roxon, Minister for Health and Ageing, ‘Bulk Billing for Over-65s Hits Record Highs’ (Press Release, 13 February 2009) <<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-nr-nr015.htm>> at 6 July 2009.

¹⁹² Dean Griggs and Carolyn Atkins, Victorian Council of Social Service, *The Bulk Billing Crisis: A Victorian Perspective* (2004).

- 60.5. 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 (where ‘out of pocket’ includes the ‘gap’ between the Schedule Fee and the fee a doctor actually charges). From 1 January 2009:¹⁹³
- all individuals will have 100% of the ‘gap’ refunded once it exceeds \$383.90 for out-of-hospital medical services;
 - eligible Concession Card Holders and families will have 80% of their ‘out of pocket’ costs for out-of-hospital medical expenses met once they spend over \$555.70; and
 - all individuals will have 80% of their ‘out of pocket’ costs for out-of-hospital medical expenses met once they spend over \$1,111.60. In September 2004, amendments were introduced to enable women to claim gap payments for pregnancy.¹⁹⁴
- 60.6. Women who have difficulty falling pregnant will be adversely affected by a change in support for fertility treatment under the 2009-10 Australian Government Budget, in which was announced a capping of the Safety Net available for IVF treatments. From 1 January 2010, a patient who reaches the safety net threshold of \$1,111.60 in out-of-pocket medical fees, or \$555.70 for those on low incomes, will only be able to claim a maximum of up to \$550 in Safety Net payments for IVF planning and treatment¹⁹⁵ – even though IVF services cost approximately \$6,000.
- 60.7. 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. We note and welcome the fact that, under the recently announced 2009-10 Budget, the Australian Government will now means-test the Medicare rebate, with the rebate phasing out incrementally for those individuals earning more than \$75,001 and couples earning more than \$150,001.¹⁹⁶
- 60.8. In particular, women with disability, women and their children in areas of high socioeconomic disadvantage and in rural, regional and remote Australia universally reported reduced access to the health system at our 2009 consultations for this NGO Report. For example, four-fifths of sole parents qualify for the low-income concession card.¹⁹⁷ Women are 83.3% of sole parents in Australia.¹⁹⁸ 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.

¹⁹³ Medicare Australia, Australian Government, *How does the Medicare Safety Net work?* (Fact Sheet, 2009).

¹⁹⁴ Australian Medical Association, ‘Extension of Australia’s Medicare Safety Net Will Ease the Financial Burden on Pregnant Women’, *The Medical News*, 1 September 2004 <<http://www.news-medical.net/?Id=4442>> at 6 July 2009.

¹⁹⁵ Australian Associated Press, ‘IVF public funding capped, nurses get more power’, *The West Australian* (Perth, Australia) 12 May 2009 <<http://www.thewest.com.au/default.aspx?MenuID=28&ContentID=141223>> at 6 July 2009.

¹⁹⁶ *Ibid.*

¹⁹⁷ Ann Harding et al, ‘Distributional Impact of Government Outlays on the Australian Pharmaceutical Benefits Scheme in 2001-02’, *The Economic Record* (2004) 283-96.

¹⁹⁸ National Foundation for Australian Women, ‘Key Points’ (Outcomes from ‘What Women Want Workshop - A Workshop on the Effect of the Federal Government’s Recent Policy Changes on Women of Working Age’, Canberra, 12 July 2005) <http://www.Security4women.com/www_keypoints_180905.pdf> at 6 July 2009.

CEDAW Committee consideration of the issue

- 60.9. In the Concluding Comments to the Fourth and Fifth combined Periodic Report, the Committee recommended that Australia ‘monitor bulk billing for health services, particularly in the rural areas, and take necessary action to ensure that it is fully applied.’¹⁹⁹

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government acknowledge that Australia’s system of universal health insurance is integral to supporting women’s realisation of their substantive right to access health care, and ensure that the ongoing political and fiscal commitment to Medicare is gender-sensitive in application and effect.

61. Access for women with disability

- 61.1. 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, particularly where women must organise any pay for their own taxis); and
- the manner in which these procedures are performed.

- 61.2. For example, Women with Disabilities Australia note that the Australian Government funded National Breast Cancer Centre does not include women with disability in the scope of its work aimed at reducing inequity of access to information and services. In relation to accessible GP surgeries, Women with Disabilities Australia note that only 4.9% of surgeries have examination beds with adjustable height mechanisms.²⁰⁰ (This was reported as an ongoing problem, despite the amendments to the Standards for General Practitioners noted at paragraph 55.1 above.) 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 Women with Disabilities Australia.²⁰¹

- 61.3. Further, the move towards ‘mega clinics’ as a way of overcoming GP shortages was reported as fraught for women with disability. In practice, what this development means is that a patient can see a bulk-billing GP, but without the ability to select particular GPs and often needing to wait for some hours for a consultation. This creates serious difficulties for women with disability who rely on support to reach a GP and, more importantly, need a consistent

¹⁹⁹ 2006 CEDAW Concluding Comments, above n 15, [27].

²⁰⁰ Jenny Bridge-Wright, WWDA, 'Waiting to Be Included - Breast and Cervical Cancer Screening, Where Are the Women with Disabilities?' (Paper presented at the Inaugural Conference on Social Aspects of Disease, Disability and Disablement, Melbourne, 1 July 2004) <<http://www.wwda.org.au/screen1.htm>> at 6 July 2009.

²⁰¹ Keran Howe and Carolyn Frohmader, 'Going Inclusive: Access to Health Care for Women with Disabilities' (Paper presented at the 4th Australian Women's Health Conference, Adelaide, February 2001) <<http://www.wwda.org.au/inclusive.htm>> at 6 July 2009.

medical practitioner to ensure appropriate health care. Not having a consistent medical practitioner often leads to serious complications in treatment and medications, seeing many women with disability going to some lengths (including financially) to see the same GP consistently. The more that the Australian health system relies on bulk-billing ‘super clinics’, the less access to appropriate primary health care there will be for women with disability.

- 61.4. One mechanism that needs to be strengthened to inform health policy is improved disaggregated data reporting and collection, for example through the National Census, to better track the need for aids and equipment in health care provision due to age as compared with disability.
- 61.5. Please also refer to the section ‘Discrimination against mothers with cognitive impairments’, in relation to article 16 at paragraphs 89.1-89.3 below.

CEDAW Committee consideration of the issue

- 61.6. In its 2006 Concluding Comments, the CEDAW Committee recommended that Australia ‘develop the necessary infrastructure to ensure that disabled women have access to all health services.’²⁰²

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments 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.
- ⇒ THAT all Australian governments 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.
- ⇒ THAT all Australian governments advocate for the inclusion of women with disability in generic health research.
- ⇒ THAT all Australian 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.

62. Access for women from NESB and CALD backgrounds

- 62.1. 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 Department of Human Services’ Language Services Policy launched in 2005, these types of initiatives can be undermined by inadequate funding for such services, or because they remain recommendatory only rather than mandatory. For example, publicly-funded aged care

²⁰² 2006 CEDAW Concluding Comments, above n 15, [27].

providers with CALD residents rarely access the available telephone interpreter services to assist in informing residents on health and resident rights issues. Funding formulas need to be recalibrated to better assess and provide for such services. 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.

- 62.2. We note the Australian Government Report states that migrants and immigrant populations generally enjoy better health than that of the general Australian population.²⁰³ While this general finding may be true, it tends to overlook the poorer health outcomes among recently arrived migrants. It is important for health policy to recognise the impact that the broad diversity among CALD women has on their capacity to cope within the health system (for example, the rural women compared to professional women). Participants at the consultations reported that the issue of female genital mutilation had been over-emphasised in the Australian Government Report as a health issue for refugee women; rather, other issues are much more prevalent, such as mental health. A further issue that was particularly raised in our consultations was that migrant women on Temporary Business (Long Stay) visas (457 visas) must pay for their own health care treatment even if they are paying taxes.

Recommendations proposed for Concluding Comments

- ⇒ THAT State and Territory governments change funding formulas for language service provision in the health sector and cultural sensitivity training for health care professionals to better reflect the community need.
- ⇒ THAT State and Territory governments fund research on client perception of language barriers and culturally appropriate health service provision.
- ⇒ THAT all Australian governments implement constructive policy frameworks (for example, policies such as the Victorian Language Services Policy), and ensure that such frameworks are adequately funded.
- ⇒ THAT the Australian Government ensure that women working in Australia on Temporary Business (Long Stay) visas can access some form of subsidised health care.

63. Invisibility of Lesbians in health policy

- 63.1. We commend the reforms to health legislation (*National Health Act 1953* (Cth) and the *Health Insurance Act 1973* (Cth)) in December 2008 which removed long-standing provisions regarding the provision of health care and benefits that discriminated against lesbians and their families. The changes have the effect of expanding the definition of ‘de facto partner’ to include lesbian (and same-sex) relationships and improving access to Medicare and Pharmaceutical Benefits Scheme Safety Nets.²⁰⁴ However, despite these important legal changes, the design of health policy continues to impact greatly on lesbians’ access to health care.
- 63.2. National and international data indicates that lesbian, gay, bisexual and transgender communities have much higher risks of anxiety, depression, suicide and attempted suicide, self-harm and other mental health issues, as well as substance abuse, than heterosexual

²⁰³ Australian Government Report, above n 62, [10.34].

²⁰⁴ *National Health Act 1953* (Cth) s 4.

women.²⁰⁵ Lesbians are also less likely than heterosexual women to seek routine health care due to stigma and discrimination. This means that some illnesses, such as breast and cervical cancers, are likely to be diagnosed at an advanced stage when treatment options are limited.²⁰⁶ The AIDS Council of NSW has released a lesbian health strategy document for 2008-2011 which sets out a comprehensive approach to health policy and service provision for key health action areas, and Australian governments should be encouraged to adopt similar strategy documents.²⁰⁷

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be congratulated for removing discriminatory provisions from national health legislation.
- ⇒ THAT the Australian Government ensure that the National Women's Health Policy is sensitive to the particular health needs and risks of lesbians.
- ⇒ THAT State and Territory governments fund and implement programs particularly directed at the particular health needs and risks of lesbians.

²⁰⁵ Women's Health Victoria, *Depression: Gender Impact Assessment* (August 2007), 5; Queensland Association for Healthy Communities, *Did You Know? Lesbian Health Facts* (2009) <<http://www.qahc.org.au/lesbian#facts>> at 6 July 2009.

²⁰⁶ Queensland Association for Healthy Communities, *ibid*.

²⁰⁷ See AIDS Council of NSW, *Turning Point: ACON Lesbian Health Strategy 2008-2011* (2008).

Article 13: Economic and social rights

For information on Article 13 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

64. Child care funding

- 64.1. We commend the Australian Government's commitment to investing in child care places and child care support in its 2009-10 Budget.
- 64.2. The funding of all forms of child care – day care, out of school hours and vacation care – must be reviewed to ensure that a transparent and equitable approach to financing childcare is developed, and so that the Australian Government develops a comprehensive childcare policy for children up to high school age.
- 64.3. Parents who need childcare for young infants and pre-school children in order to maintain their maximum workforce attachment will continue for the same reason to need affordable and accessible out of school hours and vacation care for their school age children. Children require age appropriate care.
- 64.4. The timeliness of the Government's budgetary commitment is underlined by the recent collapse of a largely privatised model of child care due to the late-2008 financial collapse of ABC Learning Centres, a corporation which previously held a 25% stake in Australia's child care sector.²⁰⁸ This potentially presents an opportunity for the Government to strengthen a non-profit, community-based model for quality child care services.
- 64.5. Finally, we note that women's organisations have argued that the tax-funded child care subsidies for users in Australia (primarily through a means-tested child care benefit for households, and a tax rebate awarded per child per year) inordinately focuses on the demand-side issues of child care. Without a simultaneous focus on increasing the supply of quality child care, such subsidies result in inflationary pressure on the cost of child care. They also encourage for-profit child care providers to focus on areas with higher income earners where families can co-contribute to the cost of child care alongside the subsidies – pushing up fees and increasing the disparity in supply.²⁰⁹

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government's increased funding for childcare places and child care support be welcomed.
- ⇒ THAT the Australian Government develop a comprehensive childcare policy to include out of school hours and vacation care.
- ⇒ THAT the Australian Government refer the development of a more transparent and equitable approach to financing childcare to the Productivity Commission for review.

²⁰⁸ Nic MacBean, 'Community sector warns against ABC Learning bailout', *ABC News*, 23 October 2008 <<http://www.abc.net.au/news/stories/2008/10/23/2399680.htm>> at 6 July 2009.

²⁰⁹ See, eg, National Foundation for Australian Women and the WomenSpeak Alliance, above n 122, 55-60.

65. Utilities relief

- 65.1. In the context of the privatisation of utility provision, from 2004 the Victorian government expanded the Utilities Relief Grant Scheme and non-Mains Utility Relief Grant Scheme, which provide payments (on application) to assist with utilities bills to low-income earners experiencing a period of financial hardship.²¹⁰ A further case study raised at our consultations was the Hardship Utilities Grant Scheme in Western Australia, which caps payments at between \$300 and \$500 depending on circumstances.²¹¹ The Department for Child Protection administers this Scheme, and applicants may only access it through referral by a financial counselor.
- 65.2. In 2008, the Queensland Government introduced the Home Energy Emergency Assistance Scheme, modeled on the Victorian scheme. The Scheme provides a payment of up to \$360 once in a two-year period to low income households experiencing a short term financial crisis, who are unable to pay their electricity or gas bills and are facing disconnection. Although this scheme has been welcomed by the community services sector, there are some concerns regarding access, including that the eligibility criteria are narrow, inflexible or inconsistently applied, and that only one payment may be made within two years despite the payment being less than the \$360 cap amount.²¹² The Queensland Council of Social Service has recommended reforms to simplify the Scheme and make its application more equitable.²¹³
- 65.3. We note that energy hardship disproportionately affects sole parents, with an Australian Council of Social Service survey finding that 57% of sole parents had been unable to pay a utility bill in the previous 12 months.²¹⁴ Low-income women with children have been negatively affected by the increased costs associated with the privatisation of utilities.²¹⁵ The Australian Government Report highlights that the Utilities Allowance is available to recipients of certain pensions;²¹⁶ however, this Allowance is not available to recipients of the Parenting Payment. As such, sole parents are excluded from this category of government assistance.²¹⁷

²¹⁰ Department of Human Services, Victorian Government, *Utility relief grant scheme (including the non-mains utility relief grant scheme)* (2009) <<http://www.dhs.vic.gov.au/concessions/entitlements/view-all/hardship/utility-relief-grant-scheme>> at 6 July 2009.

²¹¹ Department for Child Protection, Western Australian Government, *Hardship Utilities Grant Scheme (HUGS): Information Sheet* (April 2009).

²¹² See Queensland Council of Social Service, *Submission to the CEDAW NGO Report* (31 March 2009).

²¹³ See, eg, Queensland Council of Social Service, *Submission by the Queensland Council of Social Service on the Home Energy Emergency Assistance (HEEA) Scheme* (November 2008) <http://www.qcoss.org.au/upload/5421__HEEA%20Submission_28_11.pdf> at 6 July 2009.

²¹⁴ Australian Council of Social Service, *Who is missing out? Hardship among low income Australians* (December 2008) 18. See also Clare Martin, cited in Australian Council of Social Service, 'Groups Unite To Call For Pension Boost for Sole Parents', 5 May 2009

<<http://www.acoss.org.au/News.aspx?displayID=99&articleID=5858>> at 6 July 2009.

²¹⁵ Brotherhood of St Laurence, 'Changing Pressures 1998, Electricity, Gas and Water Costs and Choices for Vulnerable Households' (1998) *Bulletin* 5.

²¹⁶ Australian Government Report, above n 62, [11.17]-[11.18].

²¹⁷ Centrelink, Australian Government, *Utilities Allowance Factsheet* (2009) available from <<http://www.centrelink.gov.au/internet/internet.nsf/publications/rt011.htm>> at 6 July 2009.

Recommendations proposed for Concluding Comments

- ⇒ THAT the introduction of utilities relief schemes in some Australian jurisdictions be welcomed.
- ⇒ THAT State and Territory governments expand the utility relief schemes so that they are available to sole parents.

66. Pensions reform

66.1. A key announcement in the 2009-10 Australian Government Budget was the unprecedented increase to most pension payments – the Age Pension, Carers Payment and Disability Support Pension. This boost was the largest increase to the Disability Support Pension in 35 years. The link between poverty and disability is now well-established, with research indicating that women with disability face greater financial and social hardship than men with disability. Therefore, the boost to the disability support pension will help address the inadequacy of this payment and help lower the number of women with disability receiving the disability support pension who are living below the poverty line.

CEDAW Committee consideration of the issue

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

67. Carer Supplement

67.1. From 17 June 2009, a new welfare payment became effective for almost 500,000 carer across Australia – an annual \$600 Carer Supplement, introduced as part of the Australian Government’s suite of pension reforms.²¹⁸ This legislated annual payment scheme replaces ad-hoc bonuses, and is available to current recipients of the Carer Payment, Wife Pension, Carer Allowance, and various pensions available to veterans and their carers. This is significant as carers are predominantly women (eg 71% of carers in South Australia are women). Those who receive the Carer Allowance will be eligible to receive a separate Carer Supplement for each person they care for; and single carers who receive the Carer Payment and Carer Allowance will be eligible to receive two separately Carer Supplement payments.

67.2. With the passage of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 on 16 June 2009, the Government has introduced fairer and simpler eligibility requirements for Carer Payment (child), focusing on level of care required than on medical or behavioural criteria.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended for the significant boost to various pension payments, and the introduction of the Carer Supplement.

²¹⁸ Australian Labor Party, ‘Double win for Australia’s carers’ (Press Release, 17 June 2009); 2009 Women’s Budget Statement, above n 35, 6.

68. Changes to the ‘Welfare to Work’ policy

- 68.1. As part of the ‘Work Choices’ industrial reforms, from 1 July 2006 all new applicants for the Parenting Payment Single (PPS) have been regulated by a policy that transfers them from this payment to the Newstart Allowance (the Australian unemployment benefit) as soon as their youngest child turns eight, requires them to seek work, register with a Job Network provider or undertake further study. There are part time work participation requirements (looking for or undertaking at least 15 hours of paid work per week) prior to this once the youngest child turns six.²¹⁹ This policy is commonly referred to as ‘Welfare to Work’.
- 68.2. The policy rationale for Welfare to Work was to increase workforce participation generally. However, the Welfare to Work reforms have been widely criticised as a punitive system that is unfair for its disproportionate impact on vulnerable and marginalised members of society, including on single mothers who do not meet the eligibility requirements.²²⁰ PPS recipients are required to accept work despite major disruption to their family arrangements, and can have their payments withdrawn if paid work is not accepted, even if the paid work does not provide for family-friendly flexible conditions.²²¹ Lack of affordable, accessible out of school hours child care exacerbates the pressure of single mothers with workforce participation requirements (refer to ‘Child care funding’ at paragraphs 64.1-64.5 above).
- 68.3. The Welfare to Work provisions have exacerbated single mothers’ access to family benefits, with the transfer to Newstart and/or paid employment actually eroding their income (due to costs associated with working and the application of higher wage-based taxes).²²² Australia has the lowest rate of employment for single mothers with dependent children across the OECD.²²³
- 68.4. In May 2009, the Participation Review Taskforce released a report with recommendations to address the concerns around workforce participation requirements for those with family responsibilities. As a result, the Australian Government has announced that it will invest \$26.8 million to help parents balance family and caring responsibilities with their search for work by providing them with more flexible opportunities to gain new skills and qualifications. From 1 July 2010, the following policies will be implemented:²²⁴
- Allowing principal carer parents to combine part-time study and voluntary work with vocational value and part-time paid work.

²¹⁹ Centrelink, Australian Government, *How do I Qualify for a Parenting Payment?* (2009)

<http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_how_pp.htm> at 6 July 2009.

²²⁰ Eva Cox and Terry Priest, *Welfare to Work – At What Cost to Parenting?* (2008). See also Australian Council of Social Service, *Welfare to Work – Effects and Solutions* (2005) <<http://www.acoss.org.au/News.aspx?displayID=99&articleID=366>> at 6 July 2009; Elspeth McInnes, ‘When Unpaid Care Work Doesn’t Count: The Commodification of Family Life in the New Welfare to Work Order’ (Paper presented at ‘Road to Where: The Politics and Practice of Implementing Welfare to Work’, Brisbane, 17 – 18 July 2006)

<<http://www.ncsmc.org.au/docs/When%20Unpaid%20Care%20Work%20Doesn.doc>> at 6 July 2009.

²²¹ Research by the Australian Council of Social Services states that 1 in 3 individuals and their families become homeless as a direct consequence of social security payments being cut off for eight weeks: Australian National Organisation of the Unemployed, *Submission to Kevin Rudd - Response to Federal Labor’s Industrial Relations policy platform* (23 April 2007)

<<http://www.worklife.org.au/documents/ANOU%20submission%20to%20Kevin%20Rudd.doc>> at 6 July 2009. In this submission, the Salvation Army also states that 11% of individuals admit to engaging in criminal activity or prostitution as a means to survive an eight week non-payment period. See also Ann Harding et al, National Centre for Social and Economic Modelling, *The Distributional Impact of the Proposed Welfare-to-Work Reforms Upon Sole Parents* (28 August 2005).

²²² Such negative impact was explored before the reforms were commenced in economic modelling undertaken by the National Centre for Social and Economic Modelling (NATSEM): see *ibid*.

²²³ Participation Review Taskforce, cited at Department of Education, Employment and Workforce Relations, Australian Government, ‘Balancing family responsibilities with work participation’ (2009)

<<http://www.deewr.gov.au/Employment/Pages/Helpingparentsbalancefamilyresponsibilities.aspx>> at 6 July 2009.

²²⁴ *Ibid*. See also Council of Single Mothers and Their Children (Victoria), *Federal Budget May 2009: Impacts on Single Mothers* (2009) 2.

- Supporting principal carer parents wanting to start their own business to participate in part-time self-employment programs.
- Exempting principal carer parents from part-time participation requirements during the fortnight that includes the Christmas and New Year public holidays, recognising that child care is very difficult to obtain in these periods.
- Extending the current ‘large family’ exemptions to include older children still at home and at school, and the distance education/home-schooling exemptions.
- Improving the ability of parents experiencing family violence to obtain exemptions from participation requirements and allowing greater discretion for exemptions to be extended beyond the existing 16 weeks.
- Allowing principal carer parents who work during school terms more flexible arrangements over the long school holidays, if they are temporarily not employed but are likely to resume employment once the school term re-commences.

68.5. Further, from 1 July 2009, the way that payment-suspension penalties associated with non-participation are applied will be amended, so that Centrelink will be allowed more discretion and flexibility in applying the penalties. Centrelink will be able to consider factors such as reasonable excuse, financial hardship and compliance with a serious breach requirement in determining non-compliance.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be congratulated for the welcome changes to, and increased flexibility in, the application of workforce participation requirements for principal carer parents.

69. Addressing homelessness as a national priority

69.1. Family violence is the main cause of homelessness for women,²²⁵ who currently comprise approximately 44% of Australia’s homeless population.²²⁶ A 2008 report of the Australian Institute of Health and Welfare confirmed that family violence was the number one reason for people seeking assistance from Supported Accommodation Assistance Program providers. The Special Rapporteur on the Right to Adequate Housing has also noted that ‘domestic violence is a key cause of women’s homelessness and presents a real threat to women’s security of person and security of tenure.’²²⁷

69.2. The Australian Government has recognised the urgent need to curb homelessness and has made it a national priority. In December 2008, the Government produced a White Paper on homelessness entitled *The Road Home*,²²⁸ which sets a strategic agenda until 2020 for

²²⁵ PILCH Homeless Persons’ Legal Clinic, *Outside Glass Houses: Mapping the legal needs of women at risk of homelessness escaping family violence* (September 2007), available from <www.pilch.org.au/hplc> at 6 July 2009.

²²⁶The Australian Bureau of Statistics 2006 Census data reveals that on any given night in Australia approximately 105,000 people are experiencing homelessness: Australian Bureau of Statistics, *Counting the Homeless 2006* (2008). This reflects a rise in the homeless population of almost 5% between 2001 and 2006: a comparison of ABS 2001 data (99,900) with ABS 2006 data (104,676) shows an increase of approximately 4.78% in the homeless population in Australia. See also Mission Australia, ‘Latest homeless figures reflect “wasted years of inaction”’ (Press Release, 4 September 2008) <<http://www.missionaustralia.com.au/news/media-releases/708-latest-homeless-figures-reflect-wasted-years-of-inaction>> at 6 July 2009.

²²⁷ Miloon Kothari, *Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination*, Miloon Kothari, in accordance with Commission resolution 2002/49, UN Doc E/CN.4/2003/55 (26 March 2003) [27].

²²⁸ Kevin Rudd, Prime Minister and Tanya Plibersek, Minister for the Status of Women, ‘Government launches 12 year plan to reduce homelessness in Australia’ (Joint Press Release, 21 December 2008) <http://www.tanyaplibersek.fahcsia.gov.au/internet/tanyaplibersek.nsf/content/12yr_plan_reduce_homelessness_22dec08.htm> at 6 July 2009.

reducing homelessness in Australia. The White Paper also recognises that family violence is the major cause of homelessness for women (see discussion of this under ‘Housing and family violence’ at paragraphs 91.1-91.3 below).

- 69.3. The primary goals of the White Paper are to halve homelessness, and provide supported accommodation to all ‘rough sleepers’ who need it by 2020. As part of the White Paper agenda, the Government has created a new National Affordable Housing Agreement,²²⁹ which commenced in January 2009 and promises to provide \$6.2 billion in funding over the next five years on housing assistance measures.²³⁰ The Government also announced a further \$6.4 billion in funding for the construction of social housing across all Australian states as part of its *Nation Building and Economic Stimulus Plan* which aims ‘to support jobs and invest in future long term economic growth’.²³¹
- 69.4. Despite the welcome commitments of additional funding, the White Paper does not explicitly recognise homelessness as a human rights issue. In particular, it does not commit Australia to ensure the core minimum necessities for a dignified life, such as guaranteed access to emergency accommodation or the payment of social security or income support above the poverty line. The White Paper also fails to address existing legislation that criminalises homelessness, such as public space laws, nor does it recommend the introduction of anti-discrimination laws that make it unlawful to discriminate on the basis of social status.
- 69.5. The Special Rapporteur on Adequate Housing has recommended that the Australian government adopt a human rights based approach to housing and homelessness policies and programs.²³² More recently, the Committee on Economic, Social and Cultural Rights expressed concern about the increase in homelessness within Australia over the last decade and expressly recommended that the government take effective measures to implement the right to adequate housing in order to address homelessness.²³³ The Human Rights Committee also expressed concern at the situation of homeless persons in its recent Concluding Observations.²³⁴
- 69.6. The Australian Government must also recognise and respond to the link between family violence and homelessness. As the Special Rapporteur has stated, ‘while the government’s efforts to raise awareness of domestic violence are acknowledged, greater commitment is required to ensure that all women are able to access adequate housing, and are not exposed to continuing violence.’²³⁵

²²⁹ Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, ‘Executive Summary’, *The Road Home: Homelessness White Paper* (2008). <<http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Documents/execsum.htm>> at 6 July 2009.

²³⁰ The measures include social housing, assistance to people in the private rental market, support and accommodation for people who are homeless or at risk of homelessness, and assistance with home purchasing: see Council of Australian Governments, *Communique: Council of Australian Governments Meeting* (Canberra, 29 November 2008) 6 <http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/communique_20081129.pdf> at 6 July 2009.

²³¹ Kevin Rudd, Prime Minister of Australia, ‘\$42 billion nation building and jobs plan’ (Press Release, 3 February 2009) <http://www.pm.gov.au/media/Release/2009/media_release_0784.cfm> at 6 July 2009.

²³² See Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Addendum, Mission to Australia (31 July to 15 August 2006)*, UN Doc A/HRC/4/18/Add.2 (11 May 2007).

²³³ Committee on Economic, Social and Cultural Rights, Concluding Observations, above n 4, [26].

²³⁴ UN Human Rights Committee, *Concluding Observations*, above n 16, [18].

²³⁵ Miloon Kothari, above n 232, [101].

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended on addressing homelessness as a national priority.
- ⇒ THAT the Australian Government adopt a human rights based approach to housing and homelessness policies and programs.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 13**70. Sole parents and Parenting Payment Single**

- 70.1. A 2008 report by the Organisation for Economic Development (OECD) found that the risk of poverty for Australian single parents is 70%.²³⁶ As women comprise 87% of sole parents in Australia,²³⁷ the risk of poverty disproportionately affects women.
- 70.2. Currently, sole parents who meet various income and asset tests are eligible for income support known as the Parenting Payment Single (PPS). Women make up 95% of recipients of the PPS.²³⁸ For the most part, the income and asset 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.
- 70.3. Parenting payments are still inadequate in supporting the needs of women as sole parents. In April 2009, the maximum a sole parent can receive is only \$569.80 per fortnight, while a partnered parent can receive \$409 per fortnight with the benefit of a second income in the family.²³⁹ Therefore, the exclusion of the Parenting Payments from the boost to the other key pensions announced in the 2009-20 Australian Government Budget was particularly disappointing for the 350,000 sole parents who receive the PPS.²⁴⁰ The impact of this is effectively discriminatory – the right of women who are sole parents to family benefits is effectively being overlooked. Their economic hardship is compounded by a relatively low employment rate compared to partnered women (9.4% lower), and relatively lower rates of educational attainment (60% of sole parents did not complete high school year 10). Community groups have united to call for the Australian Government to address the socio-economic exclusion of sole parents.²⁴¹
- 70.4. For single mothers with disability, the lack of increases in the PPS will be especially felt. Sole parent pensioners with disability are mostly women, are approximately 20-25% of the total number of sole parent pensioners, and are often caring for children with disability.²⁴²

²³⁶ OECD, 'Country Note: Australia', in *Growing Unequal? : Income Distribution and Poverty in OECD Countries* (2008) 2 <<http://www.oecd.org/dataoecd/44/47/41525263.pdf>> at 6 July 2009.

²³⁷ Australian Bureau of Statistics (ABS), *Australian Social Trends 2007 – Article: One-parent families*, No 4102.0 (7 August 2007) 2.

²³⁸ 2009 Women's Budget Statement, above n 35, 7. See also National Foundation for Australian Women, *Record of Proceedings*, above n 126.

²³⁹ Centrelink, Australian Government, *How much parenting payment do I get?* (2009)

<http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_pp.htm> at 6 July 2009. If other forms of assistance are added to this figure, such as Rent Assistance and the Family Tax Benefit, this figure increases to approximately \$550 per week: National Welfare Rights Network, *Pensions, Allowances and the 2009 Federal Budget: the case for equal treatment* (May 2009) 2.

²⁴⁰ Australian Associated Press, 'No apologies from Rudd on pensions', *The Canberra Times* (Canberra, Australia), 13 May 2009.

²⁴¹ Australian Council of Social Service, 'Groups Unite To Call For Pension Boost for Sole Parents', 5 May 2009

<<http://www.acoss.org.au/News.aspx?displayID=99&articleID=5858>> at 6 July 2009.

²⁴² Therese Sands, cited in *ibid*.

Sole parent carers of children with disability have a household income 46% of the Australian average, including because they have additional medical and care costs.²⁴³

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government urgently address the exclusion of sole parents and single mothers from participation in socio-economic life, including through increasing the Parenting Payment (Single) in line with other pension increases announced in the 2009-10 Australian Government Budget.

71. Equitable access to services for women with disability

71.1. There is a disparity playing out in the way the current funding structure for disability support services is allocated to women and men. Under the Commonwealth State/Territory Disability Agreement, funding for disability support services is allocated from the Commonwealth to the States/Territories. The annual review of service-usage data has identified that more funding is allocated to services that benefit men with disability than women – approximately 1.4 males compared to females used Commonwealth State/Territory Disability Agreement-funded services in 2006-07.²⁴⁴ A significant factor contributing to this outcome is that the funding focuses on supporting certain types of disability – namely, those defined as ‘high and complex needs’ (eg paraplegics, brain injuries). As disability in women tends to be chronic, long-term and forms of disability or injury, the type of supports they may require (which may be relatively minor interventions or supports) are being missed through the current funding structure. The down-stream impact of this is the exclusion of women with disability from community engagement – for example, being able to live independently or seek employment.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government responds to the disparity in patterns of use of Commonwealth State/Territory Disability Agreement-funded services between women and men with disability.

72. Women carers with disability

72.1. The over-representation of women with disability in part-time, casual and lower paying jobs or their sole reliance on government payments means that women with disability are one of the poorest groups in Australia. There is a connection between poverty and health, well-being and the exacerbation of impairments and conditions. Financial hardship impacts on obtaining quality housing, skills development and meeting the additional costs associated with disability, such as accessible transport, personal care needs, specialist aids and equipment and medical care.²⁴⁵

²⁴³ Joan Hughes, cited in *ibid*.

²⁴⁴ Australian Institute of Health and Welfare, *Disability support services 2006-07: national data on services provided under the Commonwealth State/Territory Disability Agreement* (October 2008) 16.

²⁴⁵ For a fuller discussion on poverty and people with disability see Community Affairs References Committee, Senate, Parliament of Australia, *A hand up, not a hand out: Renewing the fight against poverty (Report on Poverty and Financial Hardship)* (11 March 2004) available from <www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/poverty/report/> at 6 July 2009.

- 72.2. The marginal difference between women with disability and men with disability in relation to government payments is more revealing when examining the numbers of women with disability compared to men with disability in receipt of the disability support pension. This shows a much greater difference, with 280,000 women with disability compared to 420,000 men with disability on the disability support pension, a 40:60 percentage difference.²⁴⁶ This difference indicates that while a larger number of men with disability are receiving the disability support pension, a large number of women with disability are in receipt of other government payments, including Parenting Payment and Carers Payment.²⁴⁷ In other words, it appears that women with disability, like women in general, may undertake more parenting and caring responsibilities than men with disability.
- 72.3. Given that women with disability are more likely to be on a Parenting or Carers Payment than men with disability, and there is an expectation that women with disability will carry out traditional women's unpaid work, it is reasonable to conclude that women with disability are more likely than men with disability to be carers of people with disability. However, it is unclear as to how many women with disability are carers compared to women without disability.
- 72.4. Some indication of numbers can be gleaned from research carried out by Centrelink, which indicates that between 20 to 25% of respondents of sole parents were parents with disability who were caring for children with significant disability.²⁴⁸ This deepens our concern that the 2009-10 Australian Government Budget pension increases do not apply to the Parenting Payment (Single). People with disability receiving social security payments, particularly women with disability, are six times more likely to experience poverty than people without disability. The 20% to 25% of sole parents with disability, mainly women receiving Parenting Payment (Single), will continue to experience hardship.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government analyse the impact of its 2009-10 Budget decision to not increase the Parenting Payment benefit for women carers with disability or women with disability caring for children with disability.

73. Accessibility to housing and public buildings for women with disability

- 73.1. The issue of housing accessibility for women with disability was raised during the consultation process in Australia. The Australian 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

²⁴⁶ Sue Salthouse, cited in National Foundation for Australian Women, *Record of Proceedings*, above n 126, 26.

²⁴⁷ There has been recent growth in the uptake of the disability support pension among women, driven largely by the closure of other payments that were previously available to women with disability: cited in NFAW Retirement Submission, above n 140, 5.

²⁴⁸ National Council of Single Mothers and their Children Inc, *Welfare Reform and Sole Parents – Safeguards and Supports*, cited in National Foundation for Australian Women, *Record of Proceedings*, above n 126, 35.

governments involved. Advocates in the sector are calling for a national code for universal housing design.

- 73.2. Rights of people with disability are given effect by the *Disability Discrimination Act 1992* (Cth) which in 2000 was amended to enable the Australian Government's Attorney-General to develop the *Disability Standards for Access to Premises*. The Australian Parliament is currently undertaking an inquiry into the draft Standards. The Standards are limited to public buildings and do not cover general housing, as they are limited by the scope of the *Disability Discrimination Act* itself.
- 73.3. 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 three 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. The exclusion of common areas of apartment buildings, which is currently contained in the present draft, will not only limit access for residents but also limit people with disability from visiting people that do live in these buildings. The parliamentary committee is due to report later this year.²⁴⁹

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government develop and adopt a national code for universal housing design.
- ⇒ THAT the Australian Government modify the *Disability Standards for Access to Premises* to create maximum access to the built environment, and ensure that provisions for exemptions do not undermine the purpose of the Disability Discrimination Act.

74. Sporting and recreational life

- 74.1. We acknowledge the Australian Government's commitment to developing and supporting women's leadership in every aspect of Australian society, including in the realm of sport. The current Minister for Sport is a woman and we congratulate her for appointing three new female directors to the Australian Sports Commission in 2008, resulting in 50% female representation on that board.
- 74.2. We further commend Australian and State governments for initiatives such as the Sport Leadership Grants for Women programs (allocated \$500,000 for the 2009-10 round, \$100,000 more than the previous year)²⁵⁰ and Women's Sports Leaders Scholarships, aimed

²⁴⁹ The report of the parliamentary inquiry was released as this NGO Report was being finalised for endorsement. Key recommendations of the report to improve the draft Standards included clarifying and limiting some of the exemptions: see Standing Committee on Legal and Constitutional Affairs, House of Representatives, Parliament of Australia, *Inquiry into the draft Disability (Access to Premises - Buildings) Standards* (15 June 2009) chapter 4.

²⁵⁰ Kate Ellis, Minister for Sport and Tanya Plibersek, Minister for the Status of Women, '\$500,000 to help more Australian women excel in sports leadership' (Press Release, 21 April 2009) <<http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr09-ke-ke006.htm>> at 6 July 2009.

at increasing the representation of women in upper sports management.²⁵¹ Funding through the Australian Government's Leadership and Development Program²⁵² in 2008 enabled the Australian Women Sport and Recreation Association to deliver a series of workshops in sport leadership for women around Australia.

- 74.3. However, recent research indicates that women's representation in sport governance in the voluntary sector remains markedly low.²⁵³ In 2008, women made up only 22% of the boards of the 57 publicly funded National Sport Organisations (NSOs). Twelve out of the 57 organisations had no female director and twenty organisations had only one woman on their board. The most prestigious position of President was held by a woman in only five out of the 57 (8.8%) organisations.
- 74.4. In 2006, a Senate Committee released a final report, *About time! Women in sport and recreation in Australia*,²⁵⁴ which resulted from its inquiry into women in sport and recreation in Australia with particular reference to:
- the health benefits of women participating in sport and recreation activities;
 - the accessibility for women of all ages to participate in organised sport, fitness and recreation activities;
 - the portrayal of women's sport in the media; and
 - women in leadership roles in sport.
- 74.5. The final report contains 18 recommendations to which the Australian Government is yet to respond.
- 74.6. The Network of Immigrant and Refugee Women Australia (funded through an Office for Women Leadership and Development grant) has recently brought to the attention of the Australian Government the fact that women born outside the main English speaking countries are less likely than other women to take part in organised or non-organised sport.²⁵⁵ In 2006, the rate of sports participation in Australia of women born in main English speaking countries (66.5%) was almost double that of women born outside the main English speaking countries (34.7%). The Network has made several recommendations to improve the access and participation of immigrant and refugee women in sport and recreational activity, citing the many benefits to health, social cohesion and gender equity outcomes.

²⁵¹ See Australian Government Report, above n 62, [11.53], [11.57].

²⁵² See *ibid* [5.44].

²⁵³ Johanna Adriaanse, *A seat at the table: Experiences and perceived contributions of women board members of national sport organisations in Australia* (2008).

²⁵⁴ Environment, Communications, Information Technology, and the Arts References Committee, Senate, Parliament of Australia, *About time! Women in sport and recreation in Australia* (September 2006).

²⁵⁵ Network of Immigrant and Refugee Women Australia, *Submission on the role of Sport for Young Immigrant and Refugee Women* (May 2009).

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government use targets for women's representation on National Sport Organisations that steadily increase over time, and are linked to funding.
- ⇒ THAT the Australian Government systematically collect key indicators (statistics) on gender distribution in sport governance to monitor and evaluate the impact of initiatives.
- ⇒ THAT the Australian Government fund research into the effectiveness of women's participation on National Sport Organisation boards for representing women's interests in shaping policy, resource allocation and program development.
- ⇒ THAT the Australian Government comprehensively respond to the Senate Report (*About time! Women in sport and recreation in Australia*) and the Network of Immigrant and Refugee Women Australia Report.

75. Sports Funding Discrimination

- 75.1. It is apparent that at the Olympic, international, national and State/Territory level, funding of men's and women's programs within the same sport are vastly unequal. Examples include the sports of soccer and cricket where women have been unpaid at any level and the funding for the national leagues differ dramatically between female and male competitions. A clear example of discrimination is demonstrated by the cancellation of the Women's National Soccer League since 2004²⁵⁶ due to 'lack of funding' at a time when the men's equivalent saw the launch of a new league, recruitment of international players for millions of dollars, and an anticipated \$20 million men's World Cup campaign.²⁵⁷ Even the new Women's League which will commence in October 2008 has only been budgeted at \$3 million to \$4 million. For first time players will actually be paid, but the total salary cap for all players on a team will be \$150,000. The salary cap for each men's team is approximately \$1.8 million but no cap applies to sign up 'marquee' players.²⁵⁸
- 75.2. A gap exists in data related to funding, as there are no gender based reporting mechanisms for sporting organisations in Australia. It is suggested that as a condition of receiving Australian Government funding, recipient organisations should have an obligation to collect and report on the allocation of funds to female and male participants.
- 75.3. In 2006 a Senate Inquiry into participation by women in sports by the Environment, Communications, Information Technology and the Arts Committee²⁵⁹ took evidence on the impacts of the inequalities in the funding of women's and men's sport. The Committee found that this inequality directly resulted in lack of retention in many all female sports as they are not 'professional'.²⁶⁰

²⁵⁶ Michael Cockerill, 'Women's League launches a brave new era', *The Age* (Melbourne, Australia), 29 July 2008.

²⁵⁷ Tom Smithies, 'Costly campaign just to get to World Cup', *The Herald Sun* (Melbourne, Australia), 5 February 2008.

²⁵⁸ David Sygall and Adrian Prosenko, 'Rich A-League clubs exploiting salary-cap loophole', *The Age* (Melbourne, Australia) 18 November 2007.

²⁵⁹ Environment, Communications, Information Technology and the Arts Committee, above n 254.

²⁶⁰ *Ibid* [4.9]

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government allocate equal funds to promoting, supporting and assisting women's and men's sport.

76. Housing

- 76.1. The growing rate of homelessness has placed significant strain on social services, resulting in 57% of people requiring new accommodation being turned away.²⁶¹ In other words, more than one in two people experiencing homelessness who seek accommodation from relevant services are turned away *every day*, due to lack of beds.²⁶² Some groups have more difficulty accessing new accommodation. For example, families are more likely to be turned away than single people.²⁶³ This raises concerns about equality of access to public housing services, particularly in relation to single women with children. The growing demand for homelessness services, and the government's inability to respond effectively by providing appropriate housing and shelter, also suggests that Australia may not be meeting its obligations under international human rights law.²⁶⁴
- 76.2. Discrimination against women in the public housing, private rental and financial sector detrimentally affects women's realisation of their right to housing. 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 was also reported as having 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.
- 76.3. Severe shortages in the availability of private rental and long waiting lists for public housing across Australia were reported during our consultations. For example, in the ACT, the average waiting time for even the most urgent allocation of public housing is 212 days, over seven months. In the case of standard or less urgent allocations, the waiting time is approximately 3 years.²⁶⁵ Public housing that is more readily available is often in rural and suburban areas where de-industrialisation means poorer employment prospects. Further, the particular problems for older women who leave a marriage or relationship later in life in accessing affordable housing with little or no asset base or superannuation was flagged, as was the potential for the vulnerability of these women to be compounded by mobility and health issues.
- 76.4. 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 across Australia

²⁶¹ Australian Institute of Health and Welfare, *Demand for SAAP Accommodation by homeless people 2006 – 2007: Summary* (2008) 64 *Bulletin 2*.

²⁶² *Ibid.* See also Australian Institute of Health and Welfare, 'Demand for Somewhere to stay continues to exceed available places for Australia's homeless' (Press Release, 10 October 2008) <<http://www.aihw.gov.au/mediacentre/2008/mr20081010.cfm>> at 6 July 2009.

²⁶³ *Ibid.*

²⁶⁴ That is, minimum essential levels must be immediately implemented to move towards achieving realisation of the right to adequate housing. See Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations (Art 2, para 1 of the Covenant)*, UN Doc E/1991/23, annex III, 86 (12 December 1990).

²⁶⁵ Information provided by Australian Capital Territory Council of Social Services (2006).

reported a lack of bridging services between living in an institution (such as hospital or prison) and private rental. Discharged patients are at high risk of re-admittance due to failure to take medication, arrest or homelessness where there is no family support

- 76.5. In relation to finance, 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 comparatively less than men's due to the increased casualisation and insecurity of women's jobs, leads banks to offer smaller, shorter-term loans to women than to men.
- 76.6. See also the section below on 'Housing and Family Violence' under Violence Against Women at paragraphs 91.1-91.3 below.

Recommendations proposed for Concluding Comments

- ⇒ THAT State and Territory governments review de facto and de jure discriminatory practices in the public housing programs.
- ⇒ THAT State and Territory governments develop community education programs to address discriminatory practices in the private rental markets.
- ⇒ THAT all Australian governments commit to increase funding, access and availability to various forms of supported housing and accommodation, particularly housing which meets the needs of women with disability, women experiencing mental illness and older women.
- ⇒ THAT State and Territory governments examine de facto discrimination in the banking sector and take steps to rectify such discrimination.

Article 14: Rural women

For information on Article 14 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

77. National rural women's representative body

- 77.1. The Australian Government has demonstrated a commitment to strengthening rural women's input into policy processes through convening a National Rural Women's Summit in June 2008, attracting 82 delegates from around the nation. The Australian Government Report notes that a key intended outcome of this Summit was to 'establish a national rural women's network in the context of existing representative structures'.²⁶⁶ The model for this national network is still in the process of being established, in collaboration with the National Rural Women's Coalition.
- 77.2. In May 2009, the Government announced a further \$1 million to assist more women take on leadership roles in rural and regional Australia. During the 18 months to May 2009, the Government had fostered an increase in the representation of women on the boards of the Rural Industries Research and Development Corporation entities from 20% to 43% - this is a significant achievement as women still occupy less than 20% of paid management and board positions in the agricultural sector.²⁶⁷

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government's commitment to a stronger national rural women's network and to building women's leadership capacities in rural and regional areas be commended.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 14

78. Pre-payment meters for utilities

- 78.1. Pre-payment meters for electricity operate in a number of Australian states (including Queensland, South Australia, Western Australia and Tasmania), particularly concentrating disproportionately on low-income, rural communities. There are concerns that this program will reduce equal access to electricity, and that it may exacerbate family violence. Additionally, in some cases, the practice is beyond the current consumer protection framework.
- 78.2. In Queensland, pre-payment meters may only be installed in remote communities, on the agreement of the relevant local government authority and retail entity, and deny consumers alternative choices in their energy supply arrangements.

²⁶⁶ Australian Government Report, above n 62, [12.8].

²⁶⁷ Tony Burke, Minister for Agriculture, Fisheries and Forestry, '\$1 million to help rural women take on more leadership roles' (Press Release, 25 May 2009) <[http://www.maff.gov.au/media/media_releases/2009/may/\\$1_million_to_help_rural_women_take_on_more_leadership_roles](http://www.maff.gov.au/media/media_releases/2009/may/$1_million_to_help_rural_women_take_on_more_leadership_roles)> at 6 July 2009. See also Tanya Plibersek, above n 85, 4.

- 78.3. The Queensland Council of Social Service reported that in practice, pre-payment meters are only installed in Aboriginal and Torres Strait Islander communities. Consumers using pre-payment meters are also not able to receive assistance through the Home Energy Emergency Assistance Scheme (see paragraph 65.2 above) as they pay in advance. Although specific data is not available from prepayment meter communities in Queensland, based on research in other states it is believed that there is a high, unmonitored rate of self-disconnection in remote Queensland communities.
- 78.4. In jurisdictions where prepayment meters are available as a product of choice, there are concerns that prepayment meter customers who are experiencing financial hardship are disadvantaged in maintaining access to electricity. Research by the Tasmanian Council of Social Service has shown that more than half of prepayment meter customers had accessed emergency credit, and 23% had run out of electricity completely in the previous 12 months. Those most likely to be disconnected from energy are sole parents, the majority of whom are women.²⁶⁸

Recommendations proposed for Concluding Comments

- ⇒ THAT State and Territory governments conduct the comprehensive research required to address the gendered impacts of pre-payment meters and the ongoing impact of the privatisation of utility services.
- ⇒ THAT State and Territory governments introduce adequate reforms where pre-payment meters are beyond the scope of the current consumer protection frameworks.

79. Availability and Accessibility of Health Services

- 79.1. 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 policy papers produced by the National Rural Women's Coalition.²⁶⁹ These reports identify a range of health issues for rural and remote women, including the following.

Depression and mental health for women and their families

- 79.2. In 2005, 53% of women reported that mental health services were difficult to access, and 43% of women reported that counselling services were difficult to access. One case study shared at our consultations outlined the situation of a suicidal young woman who presented at a hospital's Emergency Department but who could not be admitted by the psychiatric nurse because her family doctor was out of contact despite being 'on call' – this illustrates the dire lack of availability of medical practitioners in regional areas, leading to a lack of accountability on the part of medical practitioners and over-reliance of hospital services on local General Practitioners.

²⁶⁸ Tasmanian Council of Social Service, *Pre-payment meter use in Tasmania: consumer views and issues* (August 2006) 3.

²⁶⁹ See National Rural Women's Coalition, *Healthy Women, Healthy Communities* (2005) and *Report on health infrastructure and access to services in rural and remote Australia, particularly focusing on maternity services and their contribution to sustainable rural communities* (October 2008). The 2008 report contained a summary of a survey of 560 respondents, 97% of whom were women: 17.

Bulk-billing for medical services

- 79.3. In 2005, 60% of women reported that bulk billing is difficult to access. This concern was repeated in the 2008 survey, in which respondents voiced their concern about excessive medical fees. For example, in 2008, women in Goulburn Valley and Gippsland (Victoria) not only reported difficulty in accessing bulk-billing practices but also reported being double-billed for pap testing, once for the procedure and the second time to receive the report.²⁷⁰

Access to medical practitioners

- 79.4. In 2005, 65% of women reported that specialists are difficult to access, and in 2008, survey respondents reported a crisis in being able to access adequate and competent GP services.²⁷¹ A severe lack of dental services and long waiting times for basic dental care were identified as problems in the 2008 survey results.²⁷² Problems were reported at our consultations in relation to access to cancer checks and follow up services – for example, there is only one oncologist available for the entire Gippsland region in eastern Victoria. Also, it was reported that fly-in-fly-out services are routinely cancelled due to lack of airline services (for example, in early 2009, commercial flights between Dubbo and remote NSW towns including Walgett, Lightning Ridge and Bourke were cancelled).

Proximity to medical services

- 79.5. In 2005, 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. Thus, location has a tremendous impact on access to health services.
- 79.6. In addition, financial costs associated with travelling to the specialist, and the lack of family support occasioned by travelling to the specialist add to the stress of illness. In New South Wales, the Isolated Patients' Travel and Accommodation Assistance Scheme is available to help remediate the costs of accessing medical care, however, this Scheme was thought to be overly bureaucratic and difficult to access at our consultations.
- 79.7. Finally, state and territory jurisdictional boundaries can have an anomalous impact on the distances women must travel to access medical care – for example, the town of Broken Hill would be better serviced from Adelaide than Sydney, but because it is located in New South Wales, women are channelled to health services in the major centres of that State. One case study reported at our consultations was that of a woman in Broken Hill who became stranded in Sydney due to her return flights being cancelled.

Adolescent pregnancy

- 79.8. Australia continues to have high rates of adolescent pregnancy compared to OECD nations, and living in rural and remote areas is one of the determinants that tends towards higher

²⁷⁰ Ibid, 21.

²⁷¹ Ibid 20, 21.

²⁷² Ibid 19-20.

rates.²⁷³ Lack of information, limited or no access to abortion, limited confidentiality in seeking advice, and high levels of socio-economic disadvantaged are possible causal factors.

Maternity services

- 79.9. A 2005 report noted that 51% of women have difficulty accessing maternity services, and 58% find it difficult to access birthing centres.²⁷⁴ In a 2008 survey, 34.1% of respondents did not have any facilities to deliver babies locally and 37.2% did not have access to specialists.²⁷⁵ The scarcity of adequate maternal health services is causing significant concern, anger and frustration among this group of Australian women – pregnant mothers are often forced to travel long distances for care due to closure of local services or due to a lack of available specialists. For example in Broken Hill, the site of one of our consultations, there is no permanent obstetrician or gynaecologist. For a community such as Charters Towers in rural Queensland, between eight and ten thousand women must travel by bus or car for two hours to Townsville for delivery and some antenatal and postnatal care.
- 79.10. Closure of maternity wards has deeply impacted on the sustainability of some smaller regional communities.²⁷⁶ The death in early 2009 of a 38-year-old woman with an ectopic pregnancy who waiting several hours for an ambulance in rural Victoria is a particularly shocking example of the health consequences of the closure of some 20 maternity services in Victoria and an under-resourced regional health system.²⁷⁷
- 79.11. A further case study shared with us was that of the closure of the Pambula Hospital maternity unit in New South Wales. This has displaced the cost of basic maternity care onto pregnant women, who must pay to travel long distances to the Canberra Hospital or the Bega Hospital for care, and possibly forgo wages in the meantime. In these instances, women have to give birth without support of their families and not under the supervision of their doctor of choice.
- 79.12. Certain services which were considered by participants in the 2008 survey to not be currently available, but which are necessary to support their community's sustainability, were maternity services (37.6%), dental care (30.1%), mental health services (34.2%) and maintenance of current services (53.7%).²⁷⁸

²⁷³ Australian Research Alliance for Children and Youth, *The Wellbeing of Young Australians: Technical Report* (2008) 105; Queensland Health, *Health Determinants: Chapter Three Young People* (2004) 30. We note the inherent inaccuracy of this data as official figures only measure births and do not take into account rates of abortion: S Rachel Skinner and Martha Hickey, 'Current priorities for adolescent sexual and reproductive health in Australia' (2003) 179(3) *Medical Journal of Australia* 158-161, 158.

²⁷⁴ National Rural Women's Coalition, *Healthy Women, Healthy Communities* (2005).

²⁷⁵ National Rural Women's Coalition, *Report on health infrastructure and access to services in rural and remote Australia, particularly focusing on maternity services and their contribution to sustainable rural communities* (October 2008), 11. We acknowledge the recent announcement of funding of \$8 million over four years, effective 1 July 2009, to provide specialised maternity care training to GPs and midwives, and the intention that this funding will particularly benefit regional areas: Nicola Roxon, Minister for Health and Ageing, 'More GP and midwife training support means more choice for Australian mothers' (Press Release, 30 June 2009).

²⁷⁶ *Ibid* 12, 18-19.

²⁷⁷ Commenting on the significance of the woman's death, a reproductive health expert noted that: 'death from ectopic pregnancy... generally occurs only in third world countries with limited access to medical services': Australian Associated Press, 'Anger over "Third World" Pregnancy Death', *The Age* (Melbourne, Australia), 7 January 2009 <<http://www.theage.com.au/national/anger-over-third-world-pregnancy-death-20090107-7bt4.html>> at 6 July 2009. See also Nicky Deitz (Reporter), 'Investigation into Ectopic Death in Victoria', *AM on ABC Radio*, 6 February 2009 <<http://www.abc.net.au/am/content/2008/s2483909.htm>> at 6 July 2009.

²⁷⁸ *Ibid* 14.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government adopt the recommendations of the National Rural Women's Coalition's reports on health services and infrastructure in regional and remote communities, which called for appropriate funding of health services in rural communities based on a collaborative, community-based approach to modeling services to meet communities' needs.
- ⇒ THAT the Australian Government focus its rural health policy on increasing bulk-billing rates in rural, regional and remote areas of Australia, and in the ACT and Northern Territory.
- ⇒ THAT the Australian Government urgently address the crisis in maternity care services, particularly with regard to expanding midwifery training programs.
- ⇒ THAT the Australian Government develop strategies to attract medical specialists and healthcare workers to relocate and settle in regional and rural areas.

Article 15: Equality before the Law

For information on Article 15 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

80. Community legal centres and legal aid: one-off payments

- 80.1. Community legal centres and legal aid play a vital role in advancing women's access to justice. There are legal aid commissions in every state and territory funded by both the Australian Government and the relevant State and Territory governments. Women receive 62.5% of funding in Commonwealth law matters, which are predominantly family law matters.²⁷⁹
- 80.2. There are over 200 community legal centres across Australia with 127 centres funded by federal, state and territory governments, including federal funding of almost \$5 million for women's legal services, Aboriginal and Torres Strait Islander women's outreach project and rural women's outreach lawyer services.²⁸⁰ Community legal centres are independent, community-based organisations that provide free legal services to the public, focusing on the disadvantaged and those with special needs. Both generalist and specialist women's community legal centres provide essential services to women who experience discrimination and violence. As well as providing legal advice, centres undertake community development, community education and law reform projects that are based on client need and are preventative in outcome, and that develop the skills of the individual clients and strengthen the communities that the community legal centres serve.
- 80.3. In 2008 and 2009, the Australian Government made three one-off payments of \$10 million, \$4 million and \$1.5 million to assist community legal centres in their work, and two one-off payments of \$7 million and \$10.1 million to legal aid services.²⁸¹ While the one-off payments were welcome, increased recurrent funding is needed for legal aid and community legal centres to continue to carry on their important work in advancing women's access to justice.
- 80.4. Community legal centres experienced an 18% reduction in funds in real terms from 1998 to 2008.²⁸² 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 Aboriginal and Torres Strait Islander 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.
- 80.5. Further, while the granting of legal aid appears to be gender neutral, gender inequity exists. Criminal matters – which are state funded – are given the highest priority and have a greater portion of legal aid funding. Men are more likely than women to seek assistance in criminal

²⁷⁹ Australian Government Report, above n 62, [13.8], [13.9].

²⁸⁰ Ibid [13.5]; National Association of Community Legal Centres, *About* (2009) <<http://www.nacclc.org.au/about/>> at 6 July 2009.

²⁸¹ Robert McClelland, Attorney-General, 'Boost for social inclusion through better legal services' (Press Release, 18 April 2008); Robert McClelland, 'Funding for Legal Assistance Services' (Press Release, 9 May 2009); Robert McLelland, Attorney-General, 'Additional \$6 million for legal assistance services' (Press Release, 30 June 2009).

²⁸² National Association of Community Legal Centres, *An investment worth protecting* (January 2008).

law matters. As a result, the overall majority of legal aid grant recipients – state and federal – are men.²⁸³

Recommendations proposed for Concluding Comments

- ⇒ THAT Australian Government be commended for funding community legal centres and legal aid, and that the important work these services do in advancing women’s access to justice be acknowledged.
- ⇒ THAT the Australian Government increase ongoing funding to community legal centres and legal aid.
- ⇒ THAT the Australian Government redress the gender inequity in provision of legal aid services.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 15

81. Implementation of access to justice inquiries

81.1. The Senate Legal and Constitutional Affairs Committee is undertaking an inquiry into access to justice and is due to report on 17 August 2009. This inquiry is the latest in a number of unimplemented inquiries into the issue, including the Senate Legal and Constitutional References Committee inquiry into Legal Aid and Access to Justice completed in June 2004, and the Senate Legal and Constitutional Affairs Committee inquiry into the Australian Legal Aid System completed in June 1998. The 2004 inquiry report made 63 recommendations, including numerous recommendations to increase women’s access to justice.

81.2. Legal assistance service providers have repeatedly told such inquiries that they are unable to meet the demand presenting at the door, let alone the legal needs of the significant number of people who do not reach service delivery points. The reports have made numerous recommendations that would increase women’s access to justice. Yet, it is unclear what has happened to the recommendations from previous inquiries and another inquiry is underway.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be asked to clarify what steps have been taken to implement access to justice inquiry reports.
- ⇒ THAT the Australian Government implement the 2004 and 2009 Access to Justice Inquiry reports.

82. Women with disability – over-representation in prisons

82.1. Submission from Sisters Inside (Qld),²⁸⁴ Beyond Bars (NSW)²⁸⁵ and the Federation of Community Legal Centres (Vic)²⁸⁶ as well as recent NSW and Victorian surveys²⁸⁷ 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

²⁸³ Standing Committee on Legal Constitutional Affairs, Senate, Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (2004) 42-46.

²⁸⁴ Sisters Inside, above n 20.

²⁸⁵ Beyond Bars Alliance NSW, above n 21.

²⁸⁶ Federation of Community Legal Centres and Victorian Council of Social Services, above n 22.

²⁸⁷ Corrections Health Service, *Mental Illness among NSW Prisoners* (2003); and Department of Justice, *Victorian Prisoner Health Survey* (2003).

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.²⁸⁸ This is consistent with Victorian and international prevalence rates.

Recommendations proposed for Concluding Comments

⇒ 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 and to ensure their needs are met, which includes data collection, analysis and reporting, community support and care programs, legal support and assistance, diversionary programs and community based sentencing options.

²⁸⁸ Corrections Health Service, *ibid* 15.

Article 16: Equality in Family Relations

For information on Article 16 and Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

83. De facto access to the family court for property matters

83.1. In 2008, the *Family Law Act 1975* (Cth) was amended to allow all de facto couples, including same-sex couples, to have their disputes about the distribution of property after a relationship breakdown dealt with by the Federal family law courts. These courts already dealt with such issues for married couples, as well as matters concerning children following relationship breakdown for all couples. Previously property disputes for separating de facto couples were heard in state and territory courts under state and territory laws. The change is welcome for a number of reasons. It will ensure property disputes are dealt with more fairly across Australia. In addition, Family Court judges and other personnel have experience and expertise in relationship matters, and their procedures provide the most efficient pathway for resolution of disputes following relationship breakdown.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government be commended for providing separating de facto couples access to the Federal family law courts for disputes about property.

84. Discrimination against same-sex relationships removed in relation to financial and work-related benefits and entitlements

84.1. In November 2008, the Australian Parliament passed legislation expanding the rights of same-sex couples in relation to financial and work-related benefits and entitlements. As a result of these welcome amendments, same-sex couples are now entitled to:

- leave their superannuation entitlements to their partner or children upon death;²⁸⁹
- receive the same government entitlements as married and opposite-sex couples and their dependent children;²⁹⁰ and
- the same rights in relation to tax, social security, health care, aged care and employment as married and opposite-sex couples and their dependent children.²⁹¹

84.2. However, the legislation will also mean that lesbian women in receipt of social security payments may be adversely affected. Usually when introducing laws affecting social security payments the government includes a clause – often called a ‘grandfather clause’ – to ensure that those who are already receiving benefits under the old laws are not adversely affected. No such clause has been included with these latest changes. The new legislation will create

²⁸⁹ *Same-Sex Relationships (Equal Treatment in Commonwealth Laws Superannuation) Act (Cth) 2008.*

²⁹⁰ *Same-Sex Relationships (Equal Treatment in Commonwealth Laws General Law Reform) Bill (Cth) 2008.*

²⁹¹ *Aged Care Act 1997 (Cth), Health Insurance Act 1973 (Cth), National Health Act 1953 (Cth), Prohibition of Human Cloning for Reproduction Act 2002 (Cth) and Research Involving Human Embryos Act 2002 (Cth).*

hardship for lesbian couples in receipt of social security payments who have planned their living, financial, social and retirement arrangements – including mortgages – on the basis of existing social security benefits. The timing of the changes has left little time for lesbians to plan or rearrange their long-term finances and housing.²⁹² The absence of a ‘grandfather’ clause is particularly significant for older lesbian couples who enjoyed none of the financial benefits available to opposite-sex couples and their families during their working lives, and now suffer the disadvantage of only being eligible for a partner (rather than single) pension in retirement.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended for removing discrimination against same-sex couples in relation to financial and work-related benefits and entitlements.
- ⇒ THAT the Australian Government introduce a clause to guarantee that lesbians receiving social security benefits do not lose their existing entitlements, or introduce a lengthier adjustment time to allow women to rearrange their finances.

85. Family Court of Australia’s Family Violence Best Practice Principles

85.1. The Family Court of Australia developed and launched its ‘Family Violence Best Practice Principles’ in March 2009. The principles provide a checklist of matters that a judge must consider in making interim orders, ordering a family report, presiding over a trial or making consent orders, as well as matters that a judge might wish to consider in making a finding of family violence or unacceptable risk of a child being exposed to family violence.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Family Court of Australia’s Family Violence Best Practice Principles be welcomed.

CHALLENGES TO THE IMPLEMENTATION OF ARTICLE 16

86. Care of children and women’s safety post-separation

86.1. Amendments to the *Family Law Act 1975* (Cth) in 2006²⁹³ were ‘designed to bring about a generational change in how family conflicts are managed after separation’.²⁹⁴ However, there are significant concerns that the changes are putting women’s safety at risk. Separation is a time at which women are at particular risk of family violence.²⁹⁵

86.2. The *Family Law Act 1975* (Cth) now places a greater emphasis on the role of both parents in the life of a child. The ‘best interests of the child’, which is the paramount consideration in making decisions about parenting,²⁹⁶ has been re-defined to include primary considerations of ‘the benefit to the child of having a meaningful relationship with both of the child’s

²⁹² Coalition of Activist Lesbians – Australia (COAL) (Press Release, 7 February 2009) <home.vicnet.net.au/~coal/COAL_media_release_2%20Feb_09.pdf> at 6 July 2009.

²⁹³ See *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

²⁹⁴ Phillip Ruddock, Attorney-General, ‘Family Law: A New System, A New Culture’ (Press Release, 12 May 2005).

²⁹⁵ Cathy Humphreys and Ravi Thiara, ‘Neither justice nor protection: women’s experiences of post-separation violence’ (2003) 25 *Journal of Social Welfare and Family Law* 195-214.

²⁹⁶ *Family Law Act 1975* (Cth) s 60CA.

parents' and 'the need to protect the child from physical or psychological harm and from being subject to, or exposed to, abuse, neglect or family violence'.²⁹⁷ In addition, there is now a presumption that 'equal shared parental responsibility' is in the best interests of the child, although this presumption does not apply if there are reasonable grounds to believe that family violence or child abuse is involved.²⁹⁸ Where a court makes an equal shared responsibility order, it must consider giving parents equal time, or if not equal time then 'substantial and significant time' with the child.²⁹⁹

- 86.3. While there are some legislative safeguards for cases involving family violence or abuse,³⁰⁰ concern remains that the safety of children and mothers is inadequately protected in practice. The pro-contact culture that permeated family law practice prior to the 2006 amendments has been exacerbated by the recent reforms. The law now emphasises the benefit to the child of having a meaningful relationship with both of their parents, even though this may directly conflict with provisions that are intended to recognise the need to protect children and mothers from family violence and abuse.³⁰¹ In addition, confusion around concepts such as 'shared parental responsibility' and 'substantial and significant time', which may not *legally* apply in situations involving family violence, affects most family law cases as they are generally settled out of court and, in doing so, jeopardises women's safety.
- 86.4. Women may even be deterred from reporting family violence because of the cost implications in the legislation for cases involving false allegations of family violence.³⁰² The Chief Justice of the Family Court of Australia has asked the Australian Government to give consideration to repealing this.³⁰³
- 86.5. The Australian Institute of Family Studies is currently conducting a review of the family law reforms on behalf of the Australian Government and is due to report in 2009. However, the terms of reference for the review do not specifically include the impact of the reforms on the safety of women and children. In order to ensure women and children are safe, a thorough review of the impact of the family law reforms on the safety of women and children is necessary, along with additional resources to implement the necessary policy and legislative changes.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government repeal the false allegations provision in the *Family Law Act* as a matter of priority.
- ⇒ THAT the Australian Government amend the *Family Law Act* to better protect the safety of children and mothers.

²⁹⁷ *Family Law Act 1975* (Cth) s 60CC.

²⁹⁸ *Family Law Act 1975* (Cth) s 61DA.

²⁹⁹ *Family Law Act 1975* (Cth) s 65DAA.

³⁰⁰ *Family Law Act 1975* (Cth) ss 60I(9)(b), 61DA(2).

³⁰¹ Women's Legal Services Australia, *Submission to the Senate Legal and Constitutional Committee Inquiry into the Provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005* (28 February 2006), available from <http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/family_law/submissions/sublist.htm> at 6 July 2009.

³⁰² *Family Law Act 1975* (Cth) s 117AB.

³⁰³ Chief Justice Diana Bryant, 'Family Violence, Mental Health and Risk Assessment in the Family Law System' (Speech delivered at Queensland University of Technology Faculty of Law, Brisbane, Australia, 21 April 2009) available from <<http://www.law.qut.edu.au/community/lectures/index.jsp>> at 6 July 2009.

87. Changes to child support formula

- 87.1. Since 2006, the Australian Government has introduced staged changes to the child support scheme, including changing the minimum liability to \$6 per week and introducing additional review and appeal avenues.³⁰⁴ In July 2008, changes to the formula used to calculate child support payments were implemented. The new formula treats both parents' incomes equally and takes into account the level of care parents provide.³⁰⁵
- 87.2. It is difficult to determine the impact of the new formula due to its complex nature and recent introduction. However, there is already concern that the formula is resulting in less financial support for children from separated families. This is because the payments made to primary carers – mostly women – are generally lower under the new scheme.³⁰⁶ Single mothers have reported that there are significant problems with the new scheme, including reduced financial support, lack of enforcement and collection, and lack of recognition of the significance of abuse, violence and coercion of mothers by ex-partners with regards to child support.³⁰⁷ While the accompanying changes to the family tax benefit³⁰⁸ may compensate for some of this reduction, it is not expected to make up for the decrease in financial support provided to primary carers.³⁰⁹ An Australian Government evaluation of the impact of the reforms found that, generally, payers of child support fared better than payees under the new scheme.³¹⁰
- 87.3. In addition, the high level of uncollected child support and fraud by child support payers is still a major concern for many women, who are generally the recipients of child support. Uncollected child support liabilities amount to more than \$1 billion,³¹¹ and the Commonwealth Ombudsman has expressed concern that the Child Support Agency did not adequately address customer fraud.³¹² The Australian Government has taken steps to implement the Ombudsman's recommendations and has collected several hundred million dollars in child support debt in the last two years through various enforcement mechanisms, including litigation, a tax lodgement enforcement program and an intensive debt collection program. However, the uncollected child support debt remains at an unacceptably high rate and the Australian Government must continue to monitor this debt and take further steps to reduce it.

³⁰⁴ See *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (Cth).

³⁰⁵ Joe Ludwig, Senator for Queensland, 'A Fairer Child Support Scheme Begins' (Press Release, 30 June 2008).

³⁰⁶ Melanie Christiansen, 'Plight of Single Mums "to Worsen" as Child Support Changes', *The Courier Mail* (Brisbane, Australia), 6 May 2008 <<http://www.news.com.au/couriermail/story/0,23739,23650252-5012912,00.html>> at 6 July 2009; Erin O'Dwyer, 'Divorced from Wealth', *The Sydney Morning Herald* (Sydney, Australia), 19 April 2008 <<http://www.smh.com.au/news/national/divorced-from-wealth/2008/04/18/1208025479846.html>> at 6 July 2009.

³⁰⁷ Solomums Australia for Family Equity, *Submission to the Senate Community Affairs Committee Inquiry into Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008* (16 October 2008).

³⁰⁸ Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, *Child Support Scheme Reforms: Fact Sheet Seventeen: Changes to Family Tax Benefit (FTB)* (2008) available from <<http://www.fahcsia.gov.au/sa/childsupport/pubs/ReformFactsheets/Pages/ChildSupportReformFact17.aspx>> at 6 July 2009.

³⁰⁹ Christiansen, above n 306.

³¹⁰ 'Thirty-seven per cent of payees and around 51 per cent of payers have net increases as a result of the reforms (that is, they receive more overall). Around 49 per cent of payees and 33 per cent of payers have net reductions (that is, they receive less overall)': Australian Government, *Report on the Population Impact of the New Child Support Formula* (2008) 4.

³¹¹ Department of Human Services, Australian Government, *Annual Report 2007-2008* (2008).

³¹² Commonwealth Ombudsman, *Child Support Agency, Department of Human Services: Responding to allegations of customer fraud* (2008).

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government review the child support formula and its impact on women, who are generally the primary carers of children.
- ⇒ THAT the Australian Government be commended on the steps taken to reduce child support debt and fraud, and that it continue to monitor child support debt and take further steps to reduce the \$1 billion in uncollected child support debt.

88. Discrimination against same-sex couples in relation to marriage and adoption

- 88.1. While some positive steps have been made to address discrimination against same-sex couples, discrimination remains in relation to marriage. In 2004, the former Australian Government amended the *Marriage Act 1961* (Cth) specifically to exclude the recognition of same-sex marriages.³¹³ The current Australian Government, which was in Opposition at the time, supported the substance of the legislation and, since taking office, has indicated that it does not intend to remove the exclusion.³¹⁴
- 88.2. Lesbian couples are arbitrarily discriminated against in relation to adoption in most parts of Australia. In most parts of Australia, lesbian couples are not eligible to adopt. While Western Australia, the ACT and Tasmania have amended their legislation to allow same-sex couples to adopt,³¹⁵ other states and territories have not. For example, in New South Wales, heterosexual couples are eligible to adopt children if they are ‘of good repute and are fit and proper persons to fulfill the responsibilities of parents’ but lesbian couples are ineligible even if they meet this criteria.³¹⁶

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government commit to working with State and Territory governments towards a nationally consistent approach to relationship recognition, in particular one that includes same-sex and mixed-sex couples, on terms of equality.
- ⇒ THAT the Australian Government commit to working with State and Territory governments to eliminate discrimination against lesbian couples in relation to adoption.

89. Discrimination against mothers with cognitive impairments

- 89.1. Parents with disability, particularly mothers with intellectual disability and mothers with psychosocial disability, are significantly over represented in the child protection system.³¹⁷ The prejudicial assumptions about the parenting capacity of people with disability means that ‘(d)isability is constructed as a risk factor for abuse and neglect rather than as an indicator of possible support needs’.³¹⁸ It is more likely that parents with disability will have at least one child, if not more, removed early in life, and approximately ‘1 in 6 children in

³¹³ See *Marriage Amendment Act 2004* (Cth).

³¹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 24 June 2004, 31460-2 (Nicola Roxon, Shadow Attorney-General).

³¹⁵ *Adoption Act 1994* (WA) s 39, *Adoption Act 1993* (ACT) s 18, *Adoption Act 1988* (Tas) s 20(2A).

³¹⁶ *Adoption Act 2000* (NSW).

³¹⁷ Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, *Care and Support – Final Report on Child Protection Services* (December 2002) 144; Standing Committee on Social Issues, Legislative Council, Parliament of New South Wales, *Making it Happen – Final Report on Disability Services* (November 2002) 126.

³¹⁸ Standing Committee on Social Issues, *ibid* (December 2002) 145.

out-of-home care will have a parent who has a disability'.³¹⁹ Consultation participants also reported that negative stereotypes also affect access to family planning and parenting services.

- 89.2. However, evidence provided at the NSW Legislative Council Inquiry into Disability Services and the Inquiry into Child Protection Services demonstrates that when family support programs and sufficient community-based mental health services are provided to parents with disability, the outcomes for their children are not significantly different from other children.³²⁰ This is in direct contrast to the more negative outcomes of children who are in out-of-home care. Despite this, there are almost no services in Australia that recognise the need for intensive parenting support or that provide intensive parenting support to parents with disability.
- 89.3. Women with disability also experience restrictions in realising their rights to full reproductive freedom, including the rights to sex education, to informed consent regarding birth control, to terminate a pregnancy, to choose to be a parent, and to access reproductive information, resources, medical care, services, and support.³²¹

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments implement comprehensive and intensive parenting and family support services for parents with disability to assist with maintaining children with their parents and within their own family homes.
- ⇒ THAT the Australian Government commit to working with State and Territory governments to establish, and recurrently fund a National Resource Centre for Parents with Disabilities, focusing on pregnancy & birthing, adoption, custody, assisted reproduction, adaptive baby care equipment, as well as general parenting issues.
- ⇒ THAT the Australian Government commit to working with State and Territory governments to act immediately to investigate and address the barriers to reproductive autonomy and procreative choice for women with disability.

³¹⁹ Standing Committee on Social Issues, above n 317 (November 2002), 126.

³²⁰ Standing Committee On Social Issues, above n 317 (December 2002), 147; Standing Committee on Social Issues, *ibid*, 126.

³²¹ See generally, Women with Disabilities Australia, *Motherhood, Parenting and Women with Disabilities: Papers, Articles, Reports & Submissions 2006-2010* (2009) <<http://www.wda.org.au/motherhd2006.htm>> at 6 July 2009. See also *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 993 UNTS 3, art 23 (entered into force 3 May 2008).

Violence Against Women

For information on violence against Aboriginal and Torres Strait Islander women, please refer to the corresponding section in the Aboriginal and Torres Strait Islander Women's Report.

POSITIVE DEVELOPMENTS

90. National Council and Plan to Reduce Violence Against Women and Children

- 90.1. In 2008, the Australian Government established the National Council to Reduce Violence Against Women and Children. The purpose of the National Council is to assist with the development and implementation of a *National Plan to Reduce Violence Against Women and Children*, which aims to reduce family violence and sexual assault.
- 90.2. On 29 April 2009, the National Council released a major report *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021*.³²² The Australian Government has agreed to immediately progress 18 of the 20 priority recommendations made by the National Council in *Time for Action*. These recommendations include:
- investing:
 - \$12.5 million for a new national telephone and online crisis service;
 - \$9 million to improve the quality and uptake of respectful relationships programs for school age young people;
 - \$17 million for a public information campaign focused on changing attitudes and behaviours that contribute to violence; and
 - \$3 million to support research on perpetrator treatment and nationally consistent laws;
 - asking the Australian Law Reform Commission to work with State and Territory law reform commissions to examine the inter-relationship of laws that relate to the safety of women and their children;
 - establishing the Violence Against Women Advisory Group to advise on the National Plan to Reduce Violence against Women; and
 - working with the States and Territories to enforce domestic and family violence orders across State borders through national registration, improve the uptake of family violence coronial recommendations, and identify the best methods to investigate and prosecute sexual assault cases.
- 90.3. The creation of the National Council and development of a National Plan is a positive step in addressing violence against women. However, the \$75 million allocated in the 2009-10 Australian Government Budget over four years for the *Time For Action* program and other measures on violence against women needs to be matched by increases in State and Territory spending to approach the \$120 million over the next four years that would be required to

³²² Kevin Rudd, Prime Minister, Robert McClelland, Attorney-General and Tanya Plibersek, Minister for Women, 'Time for Action to Reduce Violence Against Women and Children' (Joint Press Release, 29 April 2009).

match the per capita average set by the Council of Europe.³²³ It also represents no increase in the funding provided over the previous four-year period, despite the government's public commitment to implementing a new national action plan.³²⁴ The positive steps taken so far now need continued support from government, in terms of political will and resources, towards the release of the National Plan in 2010.

- 90.4. A number of state and territory governments have also adopted targeted action plans addressing the prevalence of violence against women, and promoting a 'whole of government' approach to eliminating violence against women.

Recommendations proposed for Concluding Comments

- ⇒ THAT initiatives from the Australian, State and Territory governments be welcomed, but authorities be reminded 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.
- ⇒ THAT the Australian Government be commended on the creation of a National Council and Plan to Reduce Violence Against Women and Children, the delivery of its *Time for Action* report, and its commitment to implement most of the priority recommendations in the National Plan.
- ⇒ THAT the Australian Government implement the remainder of the action plan as a matter of priority.
- ⇒ THAT the Australian Government work with the State and Territory governments to fund the action plan on violence against women adequately and in a sustained way to reflect the extent of the problem and to bring Australian per capita funding, at a minimum, up to the average set by the Council of Europe.
- ⇒ THAT the Australian Government ensure the action plan on violence against women includes the provision of comprehensive, accessible services, especially by increasing funding to women's non-government organisations that have expertise in assisting women who have experienced violence.
- ⇒ THAT the Australian Government ensure that the action plan on violence against women includes increased funding to women's non-government advocacy organisations that work to make women's right to be free of violence a reality.
- ⇒ THAT the Australian Government include within the action plan on violence against women the further development of legal responses, including enforcement and remedies, which are nationally consistent and recognise violence against women as a human rights violation.
- ⇒ THAT the Australian Government include in the action plan on violence against women clear targets, benchmarks and timeframes against which the results of the plan can be evaluated, and which can be used to review it.

³²³ Amnesty International Australia, 'Budget delivers mixed messages on rights' (Press Release, 13 May 2009) <<http://www.amnesty.org.au/news/comments/20974/>> at 6 July 2009.

³²⁴ The 2005–2009 figures are from Amnesty International Australia, 'National Plan must increase funding to services cautions Amnesty International' (Press Release, 29 April 2009). The funding amounts were not made clear in the Budget papers and other government statements, which has made it difficult for women's advocacy organisations to analyse the government's commitments in the area. See Australian Budget 2009–10, *Budget Paper No. 2, Part 2: Expense Measures, Families, Housing, Community Services and Indigenous Affairs* (2009) <http://www.budget.gov.au/2009-10/content/bp2/html/bp2_expense-13.htm> at 6 July 2009; 2009 Women's Budget Statement, above n 35, 13–14.

91. Housing and family violence

- 91.1. The Australian Government has recognised the links between homelessness and family violence and has committed to a comprehensive approach to address homelessness. It has recognised that family violence is the principal cause of homelessness for women, with 55% of women seeking specialist homelessness services doing so to escape violence. It has set a target of increasing by 20% the number of families who maintain or secure safe and sustainable housing following domestic or family violence by 2013.³²⁵
- 91.2. However, the level of government resources provided remains inadequate. Despite the large number of women escaping domestic or family violence who are assisted, only the needs of a small proportion of women in need are met by temporary housing refuges. More than 350 people a day are turned away from homelessness services across Australia because of a lack of capacity and resources, with women and children the most likely to be rejected.³²⁶ In particular, women from culturally and linguistically diverse communities, women with disability and older women are not appropriately supported in the majority of refuges. Where housing does exist, it is generally emergency accommodation, rather than long-term housing solutions. This is compounded by the lack of a systemic program to meet the needs of children who enter refuge with their mothers or have lived with family violence.
- 91.3. In addition, the primary government response to family violence requires women to leave their homes, rather than be supported to stay in their homes with the perpetrator leaving. While legislative provisions exist in all states and territories for the perpetrator of family violence to leave, in practice many of these measures are not implemented.³²⁷

CEDAW Committee consideration of this issue

- 91.4. The CEDAW Committee noted in its Concluding Comments that it was ‘concerned that laws that protect victims of violence and require perpetrators of domestic violence to leave the family home are not regularly enforced’.³²⁸

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government be commended for its formal recognition of the links between homelessness and family violence and the steps taken to address this.
- ⇒ THAT in addition to addressing the underlying causes of domestic or family violence the Australian Government increase funding to shelters and support services that are appropriate to women fleeing situations of domestic or family violence.
- ⇒ THAT all Australian governments are encouraged to adopt systemic responses to address needs of children who have lived with family violence.
- ⇒ THAT all Australian governments implement measures to assist women escaping domestic or family violence to stay in their homes with the perpetrator leaving.

³²⁵ Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, *The Road Home: Homelessness White Paper* (2008) available from <<http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Pages/default.aspx>> at 6 July 2009.

³²⁶ Australian Institute of Health and Welfare, Australian Government, *Demand for SAAP Accommodation by Homeless People 2005–06: A Report from the SAAP National Data Collection* (2007) 6, 56-7, available from <<http://www.aihw.gov.au/publications/index.cfm/title/10491>> at 6 July 2009.

³²⁷ Robyn Edwards, ‘Staying Home/Leaving Violence: Promoting Choices for Women Leaving Abusive Partners’ (2004) 11 *Developing Practice: The Child, Youth and Family Work Journal* 40.

³²⁸ 2006 CEDAW Concluding Comments, above n 15, [18]. See also the recommendations at [19].

92. White Ribbon Campaign

- 92.1. The White Ribbon Campaign aims to engage men and boys in ending violence against women through a range of innovative strategies. The Campaign began in Australia in 2004, initially focusing on encouraging men to pledge that they would not ‘commit, condone or remain silent about violence against women’ and to wear white ribbons on 25 November. Today, the campaign involves more than 600 Ambassadors, including the Prime Minister, media personalities and sporting stars, a range of events and activities focusing on challenging violence supporting attitudes and a widespread media campaign. In 2008, the Australian Government pledged \$1 million to the White Ribbon Foundation to expand its work in schools and attitude change campaigning. The White Ribbon Campaign now has a significant national profile and is recognised internationally for its leadership in engaging men and boys in preventing violence against women.

Recommendations proposed for Concluding Comments

⇒ THAT community organisations, White Ribbon Ambassadors and the Australian Government be commended for their work in developing and funding the White Ribbon Campaign.

93. Victorian integrated approach to family violence

- 93.1. The Victorian Government has undertaken significant work to reduce violence against women. Some of the most significant achievements include:

- the development of a whole-of-government and whole-of-community Women’s Safety Strategy to reduce violence against women;
- significant work by Victoria Police to improve the way they deal with violence against women, including the development of a Code of Practice for the Investigation of Family Violence;
- significant changes to the law in relation violence against women, including:
 - changes in relation to sexual offences;
 - the introduction of holding powers for police dealing with family violence incidents;
 - the abolition of provocation as a defence for homicide; and
 - a new system of family violence intervention orders;
- commitment to a comprehensive Sexual Assault Reform Package, including the establishment of specialist court lists for sexual offences, a specialist prosecution unit, the trial of two multi-disciplinary sexual assault units (which bring police, counsellors and medical staff under one roof) and a wide range of other initiatives;
- the piloting of a Family Violence Division of the Melbourne Magistrate’s Court at two locations and specialist family violence court services at selected other locations;
- significant Government investment in the provision and improvement of family violence services, including improved integration and co-ordination at a regional level;
- the development of a Family Violence Risk Assessment and Risk Management Framework; and
- the establishment of a family violence death review process.

- 93.2. The Victorian experience highlights that it is the combined effect of initiatives across all sectors (law reform, courts, policing, human services, offender programs, housing, education, prevention) that makes a significant difference in relation to reducing family violence and sexual assault. Consistent messages need to be given across all areas. In addition, coordination between ministers, government departments and community organisations and services has been a critical component of the changes.

Recommendations proposed for Concluding Comments

⇒ THAT the Victorian Government's work in the area of violence against women be welcomed and commended to other State and Territory governments.

CHALLENGES IN THE IMPLEMENTATION OF STRATEGIES TO ELIMINATE VIOLENCE AGAINST WOMEN

94. High rates of violence against women

94.1. While the Australian Government and state and territory governments have prioritised addressing the issue of violence against women, violence against women continues to occur at appalling levels in Australia. Participants in the community workshops organised as part of the consultation for this report overwhelmingly identified violence against women as their major concern regarding Australia's implementation of CEDAW. Statistics indicate that:

- 19% of all women experience sexual violence during their lifetime;³²⁹
- 33% of all women experience at least one incident of physical violence during their lifetime;³³⁰ and
- approximately half of female homicide victims are killed as a result of a domestic dispute.³³¹

94.2. These figures are likely to be much higher due to the fact that reporting of violence against women and sexual assault remains low: in 2005, it was estimated that only 36% of female victims of physical assault and 19% of female victims of sexual assault report the incident to police.³³²

CEDAW Committee consideration of this issue

94.3. The CEDAW Committee noted in its Concluding Comments that it remained 'concerned about the continuing prevalence of violence against women, as well as by the low rates of reporting, prosecutions and convictions in sexual assault cases'. It called on Australia:

- 'to fully and consistently implement and enforce laws on violence against women and to ensure that all women victims of violence, including indigenous, refugee and

³²⁹ Australian Bureau of Statistics, *Personal Safety Survey Australia 2005*, ABS Catalogue No 4906.0 (2005). See also Janet Phillips and Malcolm Park, Parliamentary Library, Parliament of Australia, *E-Brief: Measuring Domestic Violence and Sexual Assault against Women: A Review of the Literature and Statistics* (6 December 2004) <<http://www.aph.gov.au/library/intguide/SP/ViolenceAgainstWomen.htm>> at 6 July 2009.

³³⁰ Ibid.

³³¹ Jenny Mouzos, Australian Institute of Criminology, *Homicide in Australia: 2003–2004 National Homicide Monitoring Program (NHMP) Annual Report* (2005).

³³² Australian Bureau of Statistics, *Personal Safety Survey Australia 2005*, above n 329.

migrant women, are able to benefit from the legislative framework and support systems in place’;

- ‘to ensure that all violence against women is effectively prosecuted and adequately punished’;
- to collect statistics in a consistent manner and provide information in its next report on the number of reported cases of violence and number of convictions;
- to fully sensitise public officials to all forms of violence against women; and
- to create public awareness of violence against women as ‘infringement of women’s human rights that has grave social and financial costs for the whole community’.³³³

95. Sexual assault, community attitudes and the criminal justice system

- 95.1. The level of reporting, charges and prosecutions for sexual assaults remains unacceptably low. As stated in the Australian Government Report, 90% of women who have experienced sexual assault do not access crisis support, legal help or other support services.³³⁴ Even when sexual assaults are reported, the charge and conviction rates are also alarmingly low. For example, in New South Wales, police receive 7000 reports of sexual and indecent assault incidents each year. Only 10% of these reports result in someone being found guilty in court, and most proceed no further than the investigation stage.³³⁵
- 95.2. 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.
- 95.3. An additional contributing factor is the failure to keep victim’s counselling documents private in the prosecution process. New South Wales has a qualified privilege for victims’ counselling documents, but the lack of public funding for legal services undermines the policy objectives of the privilege: that is, to protect the victim from harm that may be caused by disclosure of his or her counselling records and to protect the broader public interest in maintaining the integrity of counselling. Other states, like Queensland, have no protection at all.

Recommendations proposed for Concluding Comments

- ⇒ THAT all Australian governments work collaboratively to address the legal, policy, attitudinal and social support barriers to prosecution of sexual assault.
- ⇒ THAT all Australian governments undertake comprehensive training across jurisdictions for the judiciary and legal counsel on the nature of rape and sexual assault and the mythologies which surround these crimes.
- ⇒ THAT all Australian governments increase support and protection for victims of rape and sexual assault acting as witnesses in trials, including through strengthening laws, policies and funding to protect the confidentiality of victims’ counselling records.

³³³ 2006 CEDAW Concluding Comments, above n 15, [19]-[20].

³³⁴ Australian Government Report, above n 62, [14.68].

³³⁵ Jacqueline Fitzgerald, ‘The attrition of sexual offences from the New South Wales criminal justice system’ (2006) 92 *Crime and Justice Bulletin*.

96. Intersection of family violence, child protection and family law jurisdictions

- 96.1. The lack of dialogue across the family violence, child protection and family law jurisdictions can often create difficulties for women in escaping violence and maintaining their family. Family violence is a common denominator in cases involving child abuse and yet there is no systematic approach by state child protection authorities for responding to the family violence in such cases. This stems, in part, from the absence of an underpinning framework to assist child protection agencies to identify family violence, and identify and hold accountable the predominant aggressor.
- 96.2. In cases where a state child protection authority has protection concerns because of family violence, typically the mother will face threats from the authority that her children will be removed if she does not act to ‘stop’ the violence by leaving the family home. Choosing not to leave the home is seen as a failure to protect. State authorities should intervene more effectively in these circumstances by assisting the woman to obtain an intervention or protection order that covers the woman and her children and, if necessary, an ouster or exclusion order to remove the perpetrator of the violence from the home.
- 96.3. A more coherent and integrated approach to child protection and family violence is needed across jurisdictions, specifically within family, family violence, criminal and child protection jurisdictions. Investigations of child abuse and family violence must be integrated with the family law and criminal justice systems. There must also be consistent consequences for perpetrators of child abuse and family violence across jurisdictions (particularly with regard to contact with children).

Recommendations proposed for Concluding Comments

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

97. Lack of family violence homicide reviews in all jurisdictions

- 97.1. Victoria has introduced a family violence homicide review process but ongoing review processes do not exist in other states and territories. Current homicide data collection does not reveal the full picture about family violence related deaths. While many of these deaths count as intimate-partner or family-member homicides for the purposes of existing data collection, others may count as homicide by a friend or acquaintance, or by a stranger. To better prevent family violence homicides, they must be viewed in connection with each other, and not as isolated, unrelated deaths. The context in which family violence deaths occur and the responses provided by a range of services and organisations must be examined.
- 97.2. A review process could identify risk factors, barriers to effective intervention and gaps in service delivery or in the integration of responses. These review processes are not aimed at attributing blame, but rather at making improvements to systems responses and preventing future deaths. Review teams do not merely collect data on the occurrence of domestic homicides, but analyse such deaths individually and in connection with each other to look for patterns and trends, and make recommendations for systemic change. The establishment of review processes in all states and territories would greatly enhance efforts made to monitor, evaluate and improve responses to family violence and prevent death.

Recommendations proposed for Concluding Comments

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

98. Women with disability

- 98.1. Women with disability are at greater risk of physical, sexual, and emotional or psychological abuse as well as to other forms of violence, such as institutional violence, chemical restraint, drug use, control of reproduction, medical exploitation, isolation, humiliation, and harassment. Abuse and violence can be perpetrated by intimate partner as well as relatives, caregivers, co-patients, residential and institutional staff, service providers, strangers, institutions, and social structures.
- 98.2. Abuse and violence against women with disability is highly prevalent in group residential settings. Because the concept of domestic and family violence is a phenomenon commonly associated with personal domestic settings, abuse and violence against women with disability often goes unidentified, and unacted on, in these settings. In supported accommodation, it is often the victim who is disadvantaged when an allegation of assault or other serious crime is made and acted on by service providers and others. The person might be immediately removed from their home into marginal accommodation, such as a respite facility, and may never be able to return due to the continued presence of the alleged offender.
- 98.3. The lack of support options might prevent women from escaping from a violent situation, or rebuilding their lives after doing so. Support services (refuges, crisis services, emergency housing, legal services, health and medical services, violence prevention services) are physically inaccessible to women with disability or exclude these women on other grounds. When they are available and accessible, they do not understand the intersections between gender, disability and violence and are therefore inappropriate.
- 98.4. Women with disability who are the victims of family violence are also particularly affected by the fear of retribution when it comes to losing their children as a result of child protection intervention. Thus, they are much likely to remain in an abusive relationship.
- 98.5. Abuse and violence against women with disability and particularly against women with cognitive disability, often goes undetected, unreported, uninvestigated, non-prosecuted and unpunished. The successful detection, investigation and prosecution of abuse and violence of persons with cognitive impairment requires, in many instances, a particular value-base, expertise, and practice that is not present, or capable of being generated, in mainstream law enforcement agencies.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government address, as a priority, the abuse and violence of women with disability living in institutions.
- ⇒ THAT the Australian Government integrate the abuse and violence against women with disability living in supported accommodation into the family violence context.
- ⇒ THAT the Australian Government advocate for the inclusion of women with disability in support services assisting with the recovery of abuse and violence, and ensure such services are available, accessible and appropriate.

99. Sterilisation of women and girls with disability

- 99.1. At the March 2008 Standing Committee of Attorneys General meeting, Ministers agreed to discontinue working on the development of a nationally consistent approach to the authorisation procedures required for lawful sterilisation of minors with cognitive disability. Non-therapeutic sterilisation of persons with cognitive disability is a particularly grave form of human rights abuse, and one that impacts particularly on girls and women with disability.
- 99.2. Disability and women's groups are concerned that the focus of the Standing Committee of Attorneys General was on legislation to authorise non-therapeutic sterilisation for the purposes of contraception and managing menstruation, rather than on legislation to prohibit non-therapeutic sterilisation of children except in circumstances where there is a serious threat to life or health. While the Standing Committee has now discontinued its work on authorising non-therapeutic sterilisation, there is no focus within Australia on prohibiting this human rights abuse, despite UN recommendations to do so. 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:

prohibit the sterilization of children, with or without disabilities, and promote and implement other measures of prevention of unwanted pregnancies...

- 99.3. Article 23 of the *Convention on the Rights of Persons with Disabilities* (ratified by Australia in July 2008) places an obligation on Australia to:

take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that... (c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

- 99.4. In 2007, UNICEF and the Office of the High Commissioner for Human Rights wrote to Women with Disabilities Australia to support the call to the Australian, State and Territory governments to develop universal legislation which prohibits sterilisation of children except in those circumstances which amount to a serious threat to health or life.

Recommendations proposed for Concluding Comments

- ⇒ THAT the Australian Government make it an offence to:
- perform non-therapeutic sterilisation of a child under the age of 18 years unless there is a serious threat to life or health;
 - perform non-therapeutic sterilisation of adults with disability in the absence of informed consent unless there is a serious threat to life or health; and
 - procure, or seek to procure, such a procedure, and to assist or aid and abet in such a procedure.

100. Services for women in rural and remote areas

- 100.1. Participants in community consultations expressed concern about limited access to family violence and sexual assault services. For example, due to the lack of qualified practitioners in western New South Wales (eg, Bourke, Walgett, Brewarrina), sexual assault victims are forced to travel hundreds of kilometres to towns such as Orange, Dubbo and Bathurst for

forensic examinations. This adds to the distress and trauma of victims of sexual assault. Victims are not to shower, brush their teeth or change their clothes before being examined. To stay in this state for hours in transit adds to the degrading experience and traumatic nature of the process involved. Victims may decide not to have forensic examinations undertaken on this basis. They may also be uncomfortable being transported long distances alone with male police officers following a sexual assault. These factors discourage victims of sexual assault in these regions from participating in the forensic process, which has implications for charge and conviction rates for sexual assault.

- 100.2. The inadequate levels of safe housing in remote communities was also identified as an issue at community consultations. For example, Broken Hill Local Women's Shelter in far-west New South Wales has only two to three units available. Menindee, 100km from Broken Hill, has no women's shelter and women go to Broken Hill if they need crisis accommodation.

Recommendations proposed for Concluding Comments

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

101. Violence against women in sport

- 101.1. In spite of government initiatives to reduce violence against women, creating a sport culture free of violence against women remains a significant challenge. The creation of a safe and supportive environment for women and girls to participate in sport, including as spectators and supporters, is a key issue and initiatives to address all forms of violence, exploitation and harassment need strengthening.³³⁶ This does not just mean creating a safe environment in which women and girls can participate in sport. It also means addressing attitudes towards women within sporting culture. There is a persistent male sporting culture in which numerous sports men demonstrate a blatant disrespect for women and leaders turn a blind eye to violence against women. Examples of incidents in the latter case were reported on in the Four Corners program 'Code of Silence' on ABC television (11 May 2009), which included women being sexually harassed and abused by football players.

Recommendations proposed for Concluding Comments

⇒ THAT the Australian Government intensify its efforts to eliminate violence against women in the realm of sport.

102. Mandatory reporting of domestic and family violence in the Northern Territory

- 102.1. In 2009 the Northern Territory Parliament amended the *Domestic and Family Violence Act 2007* (NT) to require mandatory reporting of domestic and family violence by health professionals to the police. A number of organisations opposed these changes, including the Australian Domestic and Family Violence Clearinghouse, who argued that should not be made because:

³³⁶ United Nations Division for the Advancement of Women, Department of Economic and Social Affairs, *Women 2000 and beyond: Women, gender equality and sport* (December 2007) <<http://www.un.org/womenwatch/daw/public/Women%20and%20Sport.pdf>> at 6 July 2009.

- there is no evidence that mandatory reporting improves safety for victims;
- there is evidence that a significant number of abused women are opposed to mandatory reporting;
- there is the potential for victims to be deterred or prevented from seeking medical treatment;
- the lack of experience and expertise of health workers to meet their obligations and their reluctance to do so; and
- the lack of capacity and willingness of police to investigate all reported cases.³³⁷

Recommendations proposed for Concluding Comments

⇒ THAT the Northern Territory Government remove the obligation on health professionals for mandatory reporting of domestic and family violence to the police.

³³⁷ Australian Domestic & Family Violence Clearinghouse Response, *Submission to the NT Department of Justice inquiry into the Mandatory Reporting of Domestic and Family Violence by Health Professionals* (2008).