



# Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report

The Implementation of the Convention  
on the Elimination of All Forms of  
Discrimination against Women

**(CEDAW)**



**August 2009**

**Prepared by  
Koorie Women Mean Business and  
Indigenous Law Centre UNSW,  
with YWCA Australia**



# Foreword

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We are proud to provide the United Nations with the *Aboriginal and Torres Strait Islander Women's Parallel NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. It is a great privilege to submit this report on behalf of Aboriginal and Torres Strait Islander women.

In the foreword to *Women in Australia, Australia's combined 6th and 7th report to the United Nations on the implementation of the Convention on the Elimination of All Forms of Discrimination (CEDAW)* (**Australian Government Report**), the Australian Government acknowledged that despite its commitment to supporting women and men to participate equally in paid work, family and community life:

...there are ongoing challenges regarding the full implementation of CEDAW, including meeting the challenges faced by Indigenous women and girls.

The ongoing challenges faced by many Aboriginal and Torres Strait Islander women and girls, including racism, inequality, violence, health and housing problems, limited opportunities and economic disadvantage, are given voice in this report.

Koorie Women Mean Business  
Indigenous Law Centre, University of New South Wales  
with YWCA Australia

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## 2. Endorsements

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This report is endorsed, in whole or in part, by the following non-governmental organisations:

Aboriginal Disability Network Incorporated

North Australian Aboriginal Justice Agency

Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

Aboriginal Legal Rights Movement

Indigenous Law Students & Lawyers Association of Victoria-Tarwirri

Wirringa Baiya Aboriginal Women's Legal Centre

Aboriginal & Torres Strait Islander Women's Legal Service NQ Inc.

### 3. Acknowledgments

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We would like to acknowledge and pay our respects to all the women who participated in the *Talking Circle* women's rights and consultation sessions. The contributions of these women, which have been woven throughout this report, give voice to the experiences of many Aboriginal and Torres Strait Islander women around Australia.

This project was supported by a broad group of Aboriginal and Torres Strait Islander women in the community, and we thank them for their time and efforts. The final draft of the report was kindly read by Traci Harris, Dr Jackie Huggins and Professor Bonni Robertson, Leanne Miller and Megan Davis.

In particular, we acknowledge Leanne Miller, Koorie Women Mean Business and Megan Davis, Indigenous Law Centre, University of New South Wales for their amazing dedication to this project: providing overall guidance and leadership around the direction of the project, researching and writing parts of the report, editing the report and seeing it through to fruition.

We also acknowledge the staff of the YWCA who provided significant administrative and general support in auspicing this project and in particular the leadership provided by Caroline Lambert, Executive Director, YWCA Australia; the peer support offered by Emily Chew and Edwina MacDonald, CEDAW NGO Report Project Coordinators; and Heather Walker and Katie Macwhirter for their stellar administrative support.

We also acknowledge the research and writing work of Annie Pettitt, Project Co-ordinator, Aboriginal and Torres Strait Islander Women's CEDAW Report; and Alison Laird for her excellent finessing of the report. We also acknowledge Michelle Bradley, Indigenous Law Centre, University of New South Wales for her initial work in updating statistics and information from the last *Australian Indigenous Women's NGO Shadow Report on CEDAW* in 2005 (**Australian Indigenous Women's NGO Report**) and Dr Kyllie Cripps, Indigenous Law Centre, University of New South Wales, for her work in research, writing and editing parts of the report.

Finally we acknowledge the financial support provided by the Office of Women, Australian Government through the Women's Leadership and Development Program. This project would not have been possible without this support. We are also very appreciative of the funding support we have received from UNIFEM Australia and the WomenSpeak Alliance. We would like to acknowledge the generous in-kind contributions of law firms Minter Ellison and Allens Arthur Robinson towards the consultation component, and of law firm Mallesons Stephen Jaques towards the formatting and design of the report.

The images used on the cover of this report were designed by Treaahna Hamm, Yorta Yorta, printmaker, sculptor, weaver, and painter.

## 4. Our recommendations

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We recommend that the CEDAW Committee:

1. Commend the Australian Government for its formal apology to members of the stolen generations.
2. Commend the Australian Government for its 'Closing the gap on Indigenous disadvantage' commitments and urge them to ensure that all measures are taken to consider the particular needs of Aboriginal and Torres Strait Islander women.
3. Commend the Australian Government for its formal support for the *United Nations Declaration on the Rights of Indigenous Peoples*.
4. Commend the Australian Government for acceding to the Optional Protocol to CEDAW.
5. Recommend that the Australian Government ensure that any national charter or bill of human rights includes a broad-ranging equality provision to enable the rights of Aboriginal and Torres Strait Islander women to be protected.
6. Recommend that the Australian Government take immediate steps to implement all of the recommendations of the Bringing Them Home Report, including compensation and reparations.
7. Recommend that the Australian Government expressly recognise the link between sex and race discrimination and take steps to remove the systemic barriers to equality experienced by Aboriginal and Torres Strait Islander women.
8. Commend the Australian Government for improving data collection about Aboriginal and Torres Strait Islander people, and urge that the recent COAG funds allocation be used to improve the further disaggregation of data by sex, ethnicity, ability, age and geographical location.
9. Recommend that the Australian Government support a national Indigenous representative body that encourages the full participation of Aboriginal and Torres Strait Islander women through a mechanism of equal representation (50/50).
10. Recommend that state and territory governments re-establish and provide resources for direct mechanisms to consult and engage with Aboriginal and Torres Strait Islander women.
11. Recommend that the Australian Government immediately enter into direct, ongoing and formal consultations with affected Aboriginal communities and their advocates about the operation and impact of the Northern Territory Intervention measures.
12. Recommend that the Australian Government immediately reinstate the operation of the Racial Discrimination Act in respect of all aspects of the Northern Territory Intervention and engage in meaningful consultation with affected Aboriginal communities.

13. Recommend that the Australian Government take steps to introduce a quota of seats allocated specifically to Aboriginal and Torres Strait Islander women in all Australian parliaments.
14. Recommend that the Australian Government take steps to undertake targeted recruitment of Aboriginal and Torres Strait Islander women in key employment areas like medicine, teaching and administration.
15. Recommend that state and territory governments provide ongoing and resourced mechanisms to ensure direct dialogue with Aboriginal and Torres Strait Islander women.
16. Recommend that the Australian Government support a national Indigenous representative body that encourages and supports the full participation of Aboriginal and Torres Strait Islander women through a mechanism of equal representation (50/50).
17. Recommend that the Australian Government engage in genuine consultation with Aboriginal and Torres Strait Islander women about the Northern Territory Intervention measures.
18. Recommend that the Australian Government takes steps to introduce temporary special measures that promote the recruitment, training and mentoring of Aboriginal and Torres Strait Islander women in key employment areas.
19. Recommend that the new national Indigenous representative body include mechanisms to ensure equal participation and representation of Aboriginal and Torres Strait Islander women and men in international forums.
20. Recommend that to improve educational outcomes for Aboriginal and Torres Strait Islander children, the Australian Government ensure that data relating to numeracy, literacy and school attendance be disaggregated by sex, ethnicity, ability, age and geographical location.
21. Recommend that, consistent with Articles 4 and 10, the Australian Government and state and territory governments develop a national strategy for increasing the numbers of Aboriginal and Torres Strait Islander people employed in the education sector.
22. Recommend that such a national strategy recognise the particular family and community commitments of Aboriginal and Torres Strait Islander people and create flexible employment arrangements (such as part-time work and job sharing) to allow for those commitments.
23. Recommend that the Australian Government support and fund culturally and linguistically appropriate education programs in schools for Aboriginal and Torres Strait Islander children. This must include appropriate training for teachers.
24. Recommend that the Australian Government support and fund community programs to assist young Aboriginal and Torres Strait Islander mothers to stay at school.
25. Recommend that the state and territory governments adequately fund Aboriginal and Torres Strait Islander independent schools, including funding to address the impact of complex, intergenerational issues of discrimination.

26. Recommend that all Australian Governments take positive and necessary measures to ensure that Aboriginal and Torres Strait Islander people enjoy the right to identity and culture, including through the maintenance and use of their traditional languages.
27. Recommend that the Australian Government give consideration to a census approach, similar to the model used in New Zealand, to investigate the levels of unpaid and volunteer work amongst Aboriginal and Torres Strait Islander women.
28. Recommend that the Australian Government take steps to implement a system to ensure that access to the Age Pension and superannuation is available to Aboriginal and Torres Strait Islander women at an age that matches their life expectancy and guarantees a comparable period of life to be devoted to retirement activities.
29. Recommend that the Australian Government ensure that the health measures in the 'Closing the Gap' package ensure that Aboriginal and Torres Strait Islander women's health programs and outcomes are improved, including by collecting data disaggregated by sex, ethnicity, ability, age and geographical location.
30. Recommend that the Australian Government ensure access to primary health care, appropriate housing, adequate sanitation and reliable supplies of clean water, and fresh food.
31. Recommend that the Australian Government allocate additional funds to recruit and train sufficient health care workers for all Aboriginal and Torres Strait Islander women to have access to medical services.
32. Recommend that the Australian Government Australian Women's Health Policy develop strategies to increase the participation of Aboriginal and Torres Strait Islander women in health screening programs.
33. Recommend that the Australian Government collect and make publicly available statistics on Aboriginal and Torres Strait Islander women's health, including disaggregated data showing health status by age, location, disability, income, housing status, and educational attainment.
34. Recommend that the Australian Government ensure that Aboriginal and Torres Strait Islander women are consulted on any housing policies affecting them to ensure culturally appropriate housing policies are developed.
35. Recommend that the Australian Government provide adequate support for sole parents to alleviate the disadvantage suffered by women generally and in particular Aboriginal and Torres Strait Islander women in the enjoyment of their economic and social rights under Article 13.
36. Recommend that comprehensive research be conducted to address the gendered impacts of pre-payment meters and the ongoing impact of the privatisation of utility services.
37. Recommend that the Australian Government ensure the provision of additional services to address the high incidence of family and domestic violence suffered by Aboriginal and Torres Strait Islander women in rural, regional and remote areas.

38. Recommend that the Australian Government increase the availability of translating and deaf interpreting services for Aboriginal and Torres Strait Islander women to increase their access to legal assistance and justice.
39. Recommend that the Australian Government include consultations with local Aboriginal and Torres Strait Islander women on identified sexual assault, family and domestic violence initiatives as part of program development, implementation, monitoring and evaluation particularly as programs respond to local concerns in rural and remote locations.
40. Recommend that the Australian Government seek the advice of Aboriginal and Torres Strait Islander women to review the statutory child protection mechanisms as they affect Aboriginal and Torres Strait Islander children, to halt the damage being done by the existing regime.
41. Recommend that the Australian Government undertake concerted and rigorous efforts under the Commonwealth Community Legal Services Programme, to fund and monitor programs to assist Aboriginal and Torres Strait Islander women in accessing legal services, and providing input into the system of the administration of justice.

## 5. Methods: consultation and feedback from Aboriginal and Torres Strait Islander women and non-government organisations.

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YWCA Australia, Koorie Women Mean Business and the Indigenous Law Centre, University of New South Wales have conducted consultations and prepared this independent parallel report for the CEDAW Committee's consideration. An independent Advisory Group of eminent Aboriginal and Torres Strait Islander women was also constituted to support this work.

We have worked hard to ensure that a diverse range of Aboriginal and Torres Strait Islander women could contribute to this report and that the voices of community women could be heard.

This report builds on the extensive consultations that took place before our last report in 2005. This time, we held 11 forums for Aboriginal and Torres Strait Islander women and their community organisations. These forums looked at how the United Nations could work for Aboriginal and Torres Strait Islander women and identified the most important human rights issues for our women. The forums were held in February and March 2009 in Sydney, Melbourne, Darwin, Alice Springs, Canberra, Perth, Broome, Townsville, Brisbane, Adelaide, Broken Hill and Bourke. These places include State capital cities and some important regional centres.

Two additional consultations specifically for Aboriginal and Torres Strait Islander women were held in partnership with the Diplomacy Training Program's 'Indigenous Youth, Human Rights and Advocacy Program', and in collaboration with Oxfam's 'Straight Talk' Indigenous women's advocacy program. Aboriginal and Torres Strait Islander women also took part in consultation sessions for the *Australian NGO Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 2009 (Australian NGO Report)*.

## 6. Terms used in this report

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In this report, we use the terms 'Aboriginal or Torres Strait Islander woman' or 'Aboriginal and Torres Strait Islander women'. We use these terms rather than 'Indigenous woman' or 'Indigenous women' as they more accurately reflect our cultural heritage.

The terms 'Aboriginal' or 'Torres Strait Islander' may be used as slightly more specific terms, such as when talking about a particular community.

Terms such as 'Indigenous' and 'Aboriginal' may be used in quotes or where they were used in a particular document, such as the *United Nations Declaration on the Rights of Indigenous Peoples*.

## 7. Background information

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### Aboriginal and Torres Strait Islander population

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In 2006, the Aboriginal and Torres Strait Islander population of Australia was estimated to be 517,000 people, out of a total population of 21 million people. This means that Aboriginal and Torres Strait Islander people make up around 2.5 per cent of the Australian population.

In the Aboriginal and Torres Strait Islander population, 463 700 people (90 per cent) were of Aboriginal origin only, 33 300 people (6 per cent) were of Torres Strait Islander origin only and 20 100 people (4 per cent) were of both origins.<sup>1</sup>

### Torres Strait Islander women

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The Torres Strait consists of 18 island and 2 Northern Peninsula Area communities. The islands are scattered over a geographic area of 48,000 square kilometres, from the tip of Cape York, north towards the borders of Papua New Guinea and Indonesia.

Torres Strait Islander people are a significant cultural group in Australia. Whilst 33 300 people identified as being of Torres Strait Islander origin only, many Torres Strait Islanders reside on mainland Australia. They also have their own unique cultures and experiences.

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<sup>1</sup> Australian Government Productivity Commission Steering Committee for the Review of Government Service Provision, *Overview - Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009) 2, <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0013/90130/overview-booklet.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0013/90130/overview-booklet.pdf)> (**Productivity Commission 2009 Overview**).

## 8. Introduction

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This report focuses on the experiences of Aboriginal and Torres Strait Islander women in Australia and the significant challenges these experiences pose to the protection, exercise and enjoyment of the human rights set out in CEDAW. This report sits alongside the Australian NGO Report and should be read in conjunction with that report.

### **The situation largely remains the same**

While this report acknowledges some positive developments in the status of Aboriginal and Torres Strait Islander women in Australia, our women continue to experience discrimination and disadvantage in every aspect of their lives. We are still struggling to have our human rights recognised. As one woman said:

We live and experience human rights abuses everyday.

### **New figures released**

As this report was being finalised, the Australian Government Productivity Commission released a report, *Overcoming Indigenous Disadvantage: Key Indicators 2009 (Productivity Commission Report)*.<sup>2</sup> This two-yearly report which looks at 50 social and economic indicators for Aboriginal and Torres Strait Islander Australians showed little or no improvement in many areas of social and economic inequality. The report showed that in some areas, like child abuse and imprisonment rates, the figures were actually worse. The Australian Prime Minister, Kevin Rudd, described the report's findings as 'devastating'.<sup>3</sup> We have tried to incorporate the statistics in the Productivity Commission Report into this report where possible.

### **Conclusion**

While the Australian Government has taken some significant steps towards improving the human rights and lives of Aboriginal and Torres Strait Islander women in Australia, throughout our recent consultations women reported limited change in many areas that were raised in the last Australian Indigenous Women's NGO Report in 2005. In many cases, this is also reflected in the available statistics.

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<sup>2</sup> Australian Government Productivity Commission, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009) <<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009>> (**Productivity Commission Report**).

<sup>3</sup> Yuko Narushima and Katharine Murphy, 'Child abuse six times higher for Aborigines', *The Age* (Melbourne), 3 July 2009.

## 9. CEDAW Committee Concluding Comments 2006

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In many of its 2006 Concluding Comments, the Committee on the Elimination of Discrimination Against Women (**the CEDAW Committee**) expressed concern about the status of Aboriginal and Torres Strait Islander women in Australia.<sup>4</sup>

### **Committee's Concerns**

The Committee expressed concern:

- That the Australian Government does not support the adoption of targets and quotas to promote greater participation of indigenous women in decision-making bodies.
- About the high levels of domestic violence against indigenous women in Australia.
- About the ongoing inequalities suffered by indigenous women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to employment, education, health and political participation.

The Committee expressed particular concern about the lower life expectancy among indigenous women and the disproportionately large number of our women in prisons.

### **Committee's Recommendations**

In the Concluding Comments, the Committee also:

- Recommended that the Australian Government adopt and implement targeted measures, including temporary special measures, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests.
- Called on Australia to take steps to fully implement and enforce laws on violence against women, and to ensure that all women victims of violence — including indigenous, refugee and migrant women — are able to benefit from the legislative framework and support systems.
- Called on Australia to effectively prosecute and punish all violence against women and to collect statistics and report on this issue. The Committee also recommended that Australian public officials be sensitised to all forms of violence against women and that Australia create public awareness of violence against women as an infringement of women's human rights that has grave social and financial costs for the whole community.

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<sup>4</sup> See also *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, E/C.12/AUS/CO/4 (2009); *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009); and *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (2005) as they relate to concerns and recommendations about the situation of Indigenous women.

- Recommended that the Australian Government increase Aboriginal and Torres Strait Islander women's access and awareness of the availability of targeted social services in all sectors.
- Recommended that the Australian Government take steps to increase indigenous women's legal literacy and improve their access to remedies for claims of discrimination.
- Urged the Australian Government to examine the reasons for the high rate of incarceration of indigenous women and take steps to address its root causes.
- Called on the Australian Government to continue to review and monitor the fulfilment of the provisions of the Convention in respect of indigenous women in all sectors and provide in its next report specific and analytical information and disaggregated data on these issues.<sup>5</sup>

Many of the Committee's concerns and recommendations have not been adequately addressed by the Australian Government.

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<sup>5</sup> *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia* UN Doc CEDAW/C/AUL/CO/5 (2006), [16-17, 18-19, 30, 30, 31, 31, 31, 31, and 31 respectively], (**CEDAW Committee Concluding Comments**).

## 10. Articles 1 to 3: Definition of discrimination against women, obligations to eliminate discrimination, the development and advancement of women, and acceleration of equality between men and women

### CEDAW Committee consideration of these issues in 2006 and Australian Government response

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At paragraphs 2.40-2.50 of the Australian Government Report, the Government sets out a number of measures that it has implemented to address the CEDAW Committee's 2006 Concluding Comments in paragraphs 30 and 31 that Australia improve Aboriginal and Torres Strait Islander women's enjoyment of human rights. These measures are:

- Closing the gap on Indigenous disadvantage.
- Northern Territory Emergency Response.
- National Aboriginal and Torres Strait Islander Women's Gathering.
- State and territory measures to address violence against Indigenous women.

The Committee requested that the Australian Government include adequate statistical data disaggregated by sex, ethnicity and disability.<sup>6</sup> This information remains illusive. Data is generally collated either by sex or race but not both.

### Positive developments

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#### Formal Apology

For many years, we have called for a formal apology over the stolen generations. The *Bringing Them Home* Report also recommended that Australian parliaments apologise for the laws, policies and practices of forcible removal of our children.<sup>7</sup>

These calls were finally met on 13 February 2008 when the *Motion of Apology to Australia's Indigenous Peoples* was passed by the Australian Parliament. The motion stated:

...We apologise for the laws and policies of successive governments that have inflicted profound grief, suffering and loss on these our fellow Australians. We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country. For the pain suffering and hurt of these stolen generations, their descendants and for the families left behind, we say sorry...<sup>8</sup>

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<sup>6</sup> CEDAW Committee Concluding Comments, above n 5, [15].

<sup>7</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* April (1997) Appendix 9 Recommendations, [5a], <[http://www.hreoc.gov.au/social\\_justice/bth\\_report/index.html](http://www.hreoc.gov.au/social_justice/bth_report/index.html)> (**Bringing Them Home Report**).

<sup>8</sup> Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 13 February 2008, 167 (Kevin Rudd, Prime Minister). (**Apology to Australia's Indigenous Peoples**)

We recommend that the CEDAW Committee:

**Commend the Australian Government for its formal apology to members of the stolen generations.**

## **Closing the gap on Indigenous disadvantage**

Paragraphs 2.41 to 2.42 of the Australian Government Report discuss the 'Closing the gap on Indigenous disadvantage' commitments by the Australian Government, and state and territory governments.

In December 2007, the Council of Australian Governments (**COAG**) agreed to a partnership between all levels of government to work with Indigenous communities to 'close the gap' on Indigenous disadvantage. This step was in direct response to advocacy from the Aboriginal and Torres Strait Islander community. In particular, the agreement was to put an end to the 17-year gap in life expectancy within a generation and to halve the mortality rate of Indigenous children within ten years. This was the first time Australian governments had agreed to be accountable for reaching these goals by placing achievement of the goals within a time-frame.<sup>9</sup>

While this is an important development, there are concerns that the package of initiatives does not have a specific gender analysis, in part reflecting the silencing of Aboriginal and Torres Strait Islander women's voices in community advocacy.

We recommend that the CEDAW Committee:

**Commend the Australian Government for its 'Closing the gap on Indigenous disadvantage' commitments and urge them to ensure that all measures are taken to consider the particular needs of Aboriginal and Torres Strait Islander women.**

## **Declaration on the Rights of Indigenous Peoples**

On 3 April 2009, the Australian Government announced its formal support for the *United Nations Declaration on the Rights of Indigenous Peoples (the Declaration)*. This reverses Australia's previous opposition to the Declaration. Under the previous Coalition Government, Australia was one of four countries that voted against the Declaration when it was adopted by the United Nations General Assembly in September 2007.<sup>10</sup> The Australian Government's announcement represents an important acknowledgement of the rights of our peoples to self determination and freedom from discrimination.

Articles 21 and 22 of the Declaration refer specifically to particular rights and needs of indigenous women:

<sup>9</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner and the Steering Committee for Indigenous Health Equality, *National Indigenous Health Equality Targets: Outcomes from the National Indigenous Health Equality Summit Canberra, March 18-20, 2008* (2008), 3, <[http://www.hreoc.gov.au/social\\_justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/social_justice/health/targets/health_targets.pdf)>.

<sup>10</sup> Australian Human Rights Commission, *Questions and answers on the UN Declaration on the Rights of Indigenous Peoples* (2009), <[http://www.hreoc.gov.au/social\\_justice/declaration/declaration\\_QA\\_2009.html](http://www.hreoc.gov.au/social_justice/declaration/declaration_QA_2009.html)> at 29 June 2009.

### **Article 21:**

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

### **Article 22:**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

The Declaration recognises the serious challenges facing indigenous women, explicitly saying that states must take measures, together with indigenous peoples, to ensure that indigenous women enjoy full protection against all forms of violence and discrimination.<sup>11</sup>

We recommend that the CEDAW Committee:

**Commend the Australian Government for its formal support for the *United Nations Declaration on the Rights of Indigenous Peoples*.**

### **Ratification of the Optional Protocol to CEDAW**

In November 2008, the Australian Government acceded to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Optional Protocol to CEDAW)*. We congratulate the Australian Government for this significant step, which will provide Aboriginal and Torres Strait Islander women with an international avenue to seek justice where their rights have been violated.

We recommend that the CEDAW Committee:

**Commend the Australian Government for acceding to the *Optional Protocol to CEDAW*.**

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<sup>11</sup> See M Davis, 'International Human Rights Law, Women's Rights and the Intervention' (2009) 7(10) *Indigenous Law Bulletin*.

## Challenges in implementing Articles 1-3

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### **Entrenchment of human rights protections**

Australia is the only developed nation without comprehensive constitutional or legislative protection of basic human rights at a national level. In 2008 the Attorney-General announced a broad-ranging community consultation on whether, and if so how, human rights should be better protected in Australia. There are concerns that the process has not given adequate consideration to the issues of Aboriginal and Torres Strait Islander women who would be well served by a broad ranging equality provision in any bill or charter which is adopted.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government ensure that any national charter or bill of human rights includes a broad-ranging equality provision to enable the rights of Aboriginal and Torres Strait Islander women to be protected.**

### **Stolen Generations**

#### **Bringing Them Home Report**

It is now 12 years since Australia's national human rights institution, the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission), released *Bringing Them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them Home Report)*.<sup>12</sup>

The Bringing Them Home Report detailed the national shame of generations of Aboriginal and Torres Strait Islander children being forcibly removed from their families, communities and culture by various government agencies and church missions from around 1910 to 1970. These people are the stolen generations. The report found that at least 100,000 (between 10 and 30 per cent) of our children were removed in this way, with devastating personal, community and cultural effects.

The Bringing Them Home Report made 54 recommendations aimed at providing justice for the stolen generations and to help fix the ongoing inter-generational effects of family separation. However, many of the recommendations have not been implemented by the Australian Government. Aboriginal and Torres Strait Islander women are the primary care givers in communities, and thus disproportionately affected by the ongoing community and personal trauma associated with the removal of children.

#### **Lack of compensation fund**

Despite the national apology, we are concerned that the Australian Government has not committed itself to establishing a compensation fund for the people and families of the stolen generations. The establishment of a compensation fund was one of the key recommendations of the Bringing Them Home Report<sup>13</sup> and would provide substance to the Australian Government's apology.

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<sup>12</sup> Bringing Them Home Report, above n 7.

<sup>13</sup> Bringing Them Home Report, above n 7, Appendix 9 Recommendations, [15-20].

We recommend that the CEDAW Committee:

**Recommend that the Australian Government take immediate steps to implement all of the recommendations of the Bringing Them Home Report, including compensation and reparations.**

## **Eliminating discrimination**

### **Current anti-discrimination laws**

Discrimination against Aboriginal and Torres Strait Islander women is often complex. Our women are often discriminated against on grounds that intersect, such as race and sex:

An analogy that has often been used to explain this intersectionality is that of a cake. Each of its constituent elements – flour, sugar, eggs, milk, cocoa and so on – are fundamentally different from the eventual combined product of a chocolate cake. Further, the individual ingredients can no longer be separated out and identified. The cake is not merely the accumulation of various ingredients. It is an entirely new entity. Similarly the experience of discrimination where the victim is an African Muslim woman is fundamentally different from that of an Anglo-Saxon woman or an African man. The discrimination experienced is not merely sex discrimination plus race discrimination plus religious discrimination. It is a new and unique experience of discrimination based on the intersection of her multiple identities.<sup>14</sup>

The current national anti-discrimination laws in Australia only provide protection against discrimination in four distinct areas: sex, race, disability and age. There is limited capacity in the legislation to address discrimination on intersecting grounds, such as sex and race, or sex, disability and age. This limits the ability of Aboriginal and Torres Strait Islander women to prove discrimination under the law as our experiences do not fit neatly into one category of discrimination. The form of discrimination that we experience is unique. The current national anti-discrimination laws fail to fully implement the standards and obligations required under CEDAW.

### **Review of anti-discrimination laws**

As referred to in the Australian Government Report at paragraph 2.3, the Australian Senate Standing Committee on Legal and Constitutional Affairs recently looked at the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality in Australia. The failure to address the experiences of Aboriginal and Torres Strait Islander women in the review was disappointing and further alienates Aboriginal and Torres Strait Islander women from the anti-discrimination machinery in Australia.

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<sup>14</sup> National Association of Community Legal Centres, Combined Community Legal Centres Group (NSW), Kingsford Legal Centre, 'Submission to the Senate Standing Committee on Legal and Constitutional Affairs', cited in Senate Standing Committee on Legal and Constitutional Affairs, *Report on the effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (December 2008), [4.5]. See also Ms Caroline Lambert, *Committee Hansard*, 11 September 2008, 58.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government expressly recognise the link between sex and race discrimination and take steps to remove the systemic barriers to equality experienced by Aboriginal and Torres Strait Islander women.**

## **Disaggregated data**

In its 2006 Concluding Comments, the CEDAW Committee expressed serious concerns about the significant inequalities experienced by Aboriginal and Torres Strait Islander women in a range of areas, including employment, health, education and political participation. The CEDAW Committee called on the Australian Government to provide specific and analytical information and disaggregated data on these issues in its next report.<sup>15</sup>

The Australian Bureau of Statistics has undertaken initiatives to improve the quality and availability of statistics about Aboriginal and Torres Strait Islander people.<sup>16</sup> However, while the Australian Government's 2008 Report is much improved on its previous report, it still fails to provide sufficiently adequate data disaggregated by sex, ethnicity, ability, age and geographical location.

We are still concerned that inadequate data makes it almost impossible to assess the real situation of Aboriginal and Torres Strait Islander women and to develop targeted policies and programs that will improve their lives. Our women have told us that some service providers, such as the police or health services, are reluctant to ask clients if they are of Aboriginal and/or Torres Strait Islander descent. In some cases it is not compulsory to record the data.

On 2 July 2009, COAG set aside \$46 million to improve the quality of statistics about Aboriginal and Torres Strait Islander communities. We welcome this funding commitment and hope that it will ensure improved data collection about our women.<sup>17</sup>

We recommend that the CEDAW Committee:

**Commend the Australian Government for improving data collection about Aboriginal and Torres Strait Islander people, and urge that the recent COAG funds allocation be used to improve the further disaggregation of data by sex, ethnicity, ability, age and geographical location.**

## **Lack of engagement of Aboriginal and Torres Strait Islander women's issues into policy framework**

Aboriginal and Torres Strait Islander women make up half of the total Aboriginal and Torres Strait Islander population. When the Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished in 2005, we lost a directly elected voice for Aboriginal and Torres Strait Islander communities. This change affected our capacity to participate meaningfully in Australia and internationally.

<sup>15</sup> CEDAW Committee Concluding Comments, above n 5, [14-15] and [30-1].

<sup>16</sup> Australian Bureau of Statistics, *Directions in Australia's Aboriginal and Torres Strait Islander Statistics* (2000).

<sup>17</sup> Narushima and Murphy, above n 3, 4.

In recent years, some state governments were trying to incorporate Aboriginal and Torres Strait Islander women's issues into policy frameworks across governments. Since 2008 some state and territory Aboriginal and Torres Strait Islander women's advisory, representative and consultative mechanisms have been put on hold until the structure of a new national Indigenous representative body is determined. There have been no interim arrangements proposed by, or dialogue over future mechanisms from any Australian government.

The Australian Government is exploring options for a new national Indigenous representative body. There is strong support for 50-50 representation between women and men on this body.<sup>18</sup>

We recommend that the CEDAW Committee:

**Recommend that the Australian Government support a national Indigenous representative body that encourages the full participation of Aboriginal and Torres Strait Islander women through a mechanism of equal representation (50/50).**

**Recommend that state and territory governments re-establish and provide resources for direct mechanisms to consult and engage with Aboriginal and Torres Strait Islander women.**

## Northern Territory Intervention

### Background to the Intervention

In June 2007, the Northern Territory Government released a report on the protection of children from sexual abuse in Aboriginal and Torres Strait Islander communities, called *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*<sup>19</sup> (**Little Children are Sacred Report**). The report detailed the 'extent, nature and factors contributing to sexual abuse of Aboriginal children' and the obstacles and challenges associated with effective child protection mechanisms.<sup>20</sup> The report made 97 recommendations, intended to offer advice to the Northern Territory Government on how best to support and empower Aboriginal communities to prevent child sexual abuse now and in the future. The recommendations spanned a wide range of areas, including school education, awareness campaigns, improving family support services and the empowerment of Aboriginal communities.

### Intervention measures

In response, the Australian Government announced a 'national emergency intervention' into Aboriginal communities in the Northern Territory and introduced a legislative reform package (**Northern Territory Intervention or Intervention**).<sup>21</sup> The Northern Territory

<sup>18</sup> Australian Human Rights Commission, *Progress towards a new national representative body – A Community Guide* (2009), 2, <[http://www.hreoc.gov.au/pdf/social\\_justice/nirb/community\\_guide.pdf](http://www.hreoc.gov.au/pdf/social_justice/nirb/community_guide.pdf)>.

<sup>19</sup> Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"* (2007), <[www.nt.gov.au/dcm/inquirysaac/](http://www.nt.gov.au/dcm/inquirysaac/)> (**Little Children Are Sacred Report**).

<sup>20</sup> Ibid 5.

<sup>21</sup> *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); and *Families, Community Services*

Intervention consists of a range of extraordinary measures, including deploying military and police in traditional lands, quarantining social security payments, banning alcohol, and the compulsory acquisition of Aboriginal land.

### Community response

There are mixed views about the Northern Territory Intervention measures among Aboriginal and Torres Strait Islander women. As the Australian Government Report indicates some Aboriginal and Torres Strait Islander women have reported they feel safer as a result of an increased police presence, alcohol and pornography bans and income management, particularly women who are vulnerable to intimidation or violence.<sup>22</sup> Other women have reported that while police presence has increased, when police leave the community they are at an even greater risk of violence.

Some women have felt there is little relationship between the recommendations to the Northern Territory Government contained in the Little Children are Sacred Report and the Intervention measures. Many women have expressed distress and deep concern not only about the Intervention measures themselves but also about the way in which the measures have been imposed on them.<sup>23</sup>

### The Intervention and human rights obligations

The Northern Territory Intervention raises significant concerns about Australia's international obligations to respect and promote the human rights of Aboriginal and Torres Strait Islander Australians, including:

- Despite being called a 'national emergency intervention', the Australian Government has made no effort to use children's rights and human rights principles to frame its response.
- The lack of consultation and engagement with Aboriginal communities before the Intervention measures were introduced (and, after that, about their continuation) undermines the fundamental right of Aboriginal and Torres Strait Islander peoples to participate meaningfully in decisions that affect their lives.
- The suspension of the *Racial Discrimination Act 1975* (Cth) (**Racial Discrimination Act**) and the *Northern Territory Anti-Discrimination Act* (NT) raises serious concerns about the right to equality and freedom from discrimination.

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*and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

<sup>22</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Women in Australia, Australia's combined 6th and 7th report to the United Nations on the implementation of the Convention on the Elimination of All Forms of Discrimination* (2008), <[http://www.fahcsia.gov.au/sa/women/pubs/govtint/cedaw\\_reports/cedaw\\_2008/Documents/aiv\\_2008.pdf](http://www.fahcsia.gov.au/sa/women/pubs/govtint/cedaw_reports/cedaw_2008/Documents/aiv_2008.pdf)>, [2.45] (**Australian Government Report**).

<sup>23</sup> Some Australians have maintained that the intervention is 'inherently and fatally flawed,' while others believe 'that decisive government action on a broad range of policy fronts was essential, not least because it had been the persistent demand of many, many Aboriginal people striving to keep their families and communities functioning in conditions of extreme stress.' One continuing criticism is the top-down approach in implementing the reforms and lack of community engagement and 'shared responsibility.' Sean Brennan, *Gilbert and Tobin Submission to the NTER Review* (2008) 2-4, <[http://www.gtcentre.unsw.edu.au/news/docs/Submission\\_NTER\\_Review\\_Board.pdf](http://www.gtcentre.unsw.edu.au/news/docs/Submission_NTER_Review_Board.pdf)>. at 2 February 2009.

- The compulsory acquisition and taking control of specified Aboriginal land and community living areas through renewable five year leases raises concerns about the right to self-determination, as well as our cultural rights.
- The laws introduce an income management regime, which includes measures such as quarantining 50 per cent of welfare payments for food and other essentials and linking welfare payments to children's school attendance. These measures raise particular concerns about the right to self-determination and the right to social security.

### **Lack of consultation**

The Northern Territory Intervention legislation was passed without consulting Aboriginal and Torres Strait Islander representatives or affected communities. This is despite the Australian Government's commitment, in the Common Core Document, to consulting and involving Indigenous peoples when policies and programs have an impact on them.<sup>24</sup>

Aboriginal and Torres Strait Islander women have told us that there are serious problems stemming from communication breakdowns about the Intervention and the lack of consultation with Aboriginal communities in the Northern Territory. Women in these communities want the wider Australian and international community to understand what is happening to them. Some expressed concern that many English terms used to describe the Intervention and associated measures and programs are not easily translated into community languages. The Northern Territory Aboriginal Interpreter Service reported that they had to develop new training packages to teach interpreters the new terms involved in some of the new social security arrangements imposed under the Intervention. An interpreter from the Service reported that this was difficult as 'the language was complicated and bureaucratic and not really aimed at community people'.<sup>25</sup>

As one forum participant stated:

Income management may work for those people who require it, but please do not use a blanket approach and apply this very discriminatory mission-management style of money management to all Aboriginal people.

The participant also gave the following example of practical problems with income management in a remote community, where people are given store vouchers to buy essential items rather than cash:

The mob are given store cards that they can only use in certain shops, which are usually 100 kms away from their community. For example, one woman had a voucher for around \$200 but it costs her \$100 in taxi fares to go from the community to the shop with her kids... The scary thing is that this income management has already started to be implemented in Western Australia and Qld.

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<sup>24</sup> Australian Government, *Common Core Document forming part of the reports of States Parties incorporating the Fifth Report under the International Covenant on Civil and Political Rights and the Fourth Report under the International Covenant on Economic, Social and Cultural Rights* (2006) [181], <[www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_CommonCoreDocument](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_CommonCoreDocument)>.

<sup>25</sup> Information provided at Darwin consultation.

## Suspension of the Racial Discrimination Act

The Northern Territory Intervention measures specifically target and impact on Aboriginal people. This raises concerns about the right to equality and freedom from discrimination enshrined in Article 3 of CEDAW.

The Australian Human Rights Commission has described the Northern Territory Intervention measures as 'punitive and racist'<sup>26</sup> and found that the 'racially based legislation' contravenes a number of international human rights conventions and the Racial Discrimination Act.

The Australian Government has consistently rejected calls to entrench any form of human rights protection in the Australian Constitution, taking the position that we have sufficient protection of rights in Australia. The Committee on the Elimination of Racial Discrimination (**CERD**) has previously expressed its concern about the absence of any entrenched guarantee against racial discrimination that would override the laws of the Commonwealth.<sup>27</sup> The human rights violations that have resulted from the Northern Territory Intervention are further evidence that we need such an entrenched guarantee.

## Ongoing implications of the Intervention

### *Review of the Intervention*

One year after the Northern Territory Intervention began, the Australian Government established the Northern Territory Emergency Response Review Board (**Review Board**) to conduct 'an independent and transparent review of the Northern Territory Intervention'.<sup>28</sup> On 13 October 2008, the Review Board released its report, concluding that the situation in remote Northern Territory communities and town camps remained 'sufficiently acute to be described as a national emergency and that the Northern Territory Intervention should continue'.<sup>29</sup> In reaching this conclusion, the Review Board also made three overarching recommendations:<sup>30</sup>

- There is a continuing need to address the unacceptably high level of disadvantage and social dislocation experienced by Indigenous Australians living in remote communities in the Northern Territory.
- There is a need for a relationship with Indigenous people based on genuine consultation, engagement and partnership.

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<sup>26</sup> Russell Skelton, 'Rights Watchdog Proposes Overhaul of Howard's Emergency Intervention', *The Age* (Melbourne), 12 February 2008, <<http://www.theage.com.au/news/national/pressure-to-overhaul-intervention/2008/02/11/1202578694335.html>>.

<sup>27</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (2005).

<sup>28</sup> Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'NT Emergency Response Review Board' (Press release, 6 June 2008) <[http://www.facsia.gov.au/internet/jennymacklin.nsf/content/nt\\_emergency\\_reponse\\_06jun08.htm](http://www.facsia.gov.au/internet/jennymacklin.nsf/content/nt_emergency_reponse_06jun08.htm)>.

<sup>29</sup> Northern Territory Emergency Response Review Board, *Report of the Northern Territory Emergency Response Review Board* (October 2008), 10, available at <<http://www.nterreview.gov.au/report.htm>> (**NTER Review Board Report**); Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Compulsory income management to continue as key NTER measure', (Press release, 23 October 2008), <[http://www.facsia.gov.au/internet/jennymacklin.nsf/print/nter\\_measure\\_23oct08.htm](http://www.facsia.gov.au/internet/jennymacklin.nsf/print/nter_measure_23oct08.htm)>.

<sup>30</sup> NTER Review Board Report, *ibid*, 12.

- There is a need for government actions affecting Indigenous communities to respect Australia's human rights obligations and to conform to the Racial Discrimination Act.

The Australian Government has accepted these overarching recommendations as discussed at paragraph 2.46 of the Australian Government Report.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government immediately enter into direct, ongoing and formal consultations with affected Aboriginal communities and their advocates about the operation and impact of the Northern Territory Intervention measures.**

**Recommend that the Australian Government immediately reinstate the operation of the Racial Discrimination Act in respect of all aspects of the Northern Territory Intervention and engage in meaningful consultation with affected Aboriginal communities.**

# 11. Article 4: Acceleration of equality (temporary special measures)

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## CEDAW Committee consideration of these issues in 2006

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The CEDAW Committee expressed concern that the Australian Government does not support the adoption of targets and quotas to promote greater participation of indigenous women in decision-making bodies.<sup>31</sup> The Committee also recommended that the Australian Government adopt and implement targeted measures, including temporary special measures, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests.<sup>32</sup>

## Challenges in implementing Article 4

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### **Introduction of a minimum quota for parliamentary representation**

Aboriginal and Torres Strait Islander women are still hugely under-represented at all levels of government. We continue our calls for temporary special measures to boost our representation in Australian parliaments. We recommend the introduction of a quota of seats allocated specifically to Aboriginal and Torres Strait Islander women. This measure would assist Aboriginal and Torres Strait Islander women's public participation and leadership (see further information under Article 7).

### **Recruitment of women into key employment areas**

We also call for targeted recruitment under the current Australian Government-funded Aboriginal and Torres Strait Islander recruitment and career development strategies in key employment areas like medicine, teaching and administration. Targeted recruitment measures could include providing specified scholarships and traineeship positions.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government take steps to introduce a quota of seats allocated specifically to Aboriginal and Torres Strait Islander women in all Australian parliaments.**

**Recommend that the Australian Government take steps to undertake targeted recruitment of Aboriginal and Torres Strait Islander women in key employment areas like medicine, teaching and administration.**

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<sup>31</sup> CEDAW Committee Concluding Comments, above n 5, [16].

<sup>32</sup> Ibid [31].

## 12. Article 5: Sex Roles and Stereotyping

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We note that the Australian Government Report does not refer to Aboriginal and Torres Strait Islander women at all in its discussion of Article 5 of CEDAW, despite the continuing stereotyping and prejudice we are subjected to in our daily lives.

## 13. Article 7: Public participation

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### CEDAW Committee consideration of these issues in 2006

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In its previous Concluding Comments the CEDAW Committee raised concerns about the inequalities suffered by Aboriginal and Torres Strait Islander women in many areas including political participation.<sup>33</sup>

The Committee also recommended that the Australian Government consider the adoption of quotas and targets under Article 4, to increase the number of women in political and public life, particularly for Aboriginal and Torres Strait Islander women and women belonging to ethnic minorities.<sup>34</sup> This has not happened.

### Positive developments

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#### **Indigenous Leadership Women's program**

The Office of Indigenous Policy runs the Indigenous Women's Leadership program which is building a strong network of Aboriginal and Torres Strait Islander women community leaders.

#### **Consultations about a new national Indigenous representative body**

Aboriginal and Torres Strait Islander representatives consulted about a new national Indigenous representative body have expressed their support for equal representation of men and women in all processes of the new representative body.<sup>35</sup>

### Challenges in implementing Article 7

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The mechanisms for the participation of Aboriginal and Torres Strait Islander women in public life and the formulation of public policy are inadequate.

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<sup>33</sup> CEDAW Committee Concluding Comments, above n 5, [30].

<sup>34</sup> Ibid [17].

<sup>35</sup> Australian Human Rights Commission, *Progress Towards a National Representative Body Community Guide*, above n 18, 2.

An underlying issue is that there are some governments that tend to over-consult with particular individuals and communities, and under-consult with others. This leads to a situation where some Aboriginal and Torres Strait Islander individuals and communities are being asked to speak on behalf of all Aboriginal and Torres Strait Islander peoples.

We are concerned that Aboriginal and Torres Strait Islander women do not have genuine opportunities to contribute to the development and implementation of Australian public policy, particularly about policies that affect their lives.

Aboriginal and Torres Strait Islander women have reported feeling that policy is always developed from the top-down and rarely from bottom-up and in genuine consultation with us. As one woman stated, "this means policy implemented is what "they" think is best for "us", policy is seen as a "one size fits all".<sup>36</sup>

There is no national organisation that can drive a policy agenda from Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women call for on-going, resourced and direct dialogue with their respective state/territory governments. This would guarantee that the specific issues facing Aboriginal and Torres Strait Islander women are integrated across the board.

We recommend that the CEDAW Committee:

**Recommend that state and territory governments provide ongoing and resourced mechanisms to ensure direct dialogue with Aboriginal and Torres Strait Islander women.**

## **National Indigenous Representative Body**

The abolition of the Aboriginal and Torres Straits Islander Commission (**ATSIC**) is discussed earlier in this report in relation to Articles 1-3. ATSIC was the main policy-making body for Australian and Torres Strait Islander issues. ATSIC also represented the interests of Aboriginal and Torres Straits Islander people at an international level.

Although many aspects of ATSIC were criticised by Aboriginal and Torres Strait Islander people, the abolition of ATSIC means that there is now no democratically elected voice for our peoples in Australia. ATSIC was replaced in late 2004 with a 'National Indigenous Advisory Council' that was appointed by the Australian Government, not Aboriginal and Torres Strait Islander people, and had only a limited role in monitoring government policy. In early January 2008, this Advisory Council was disbanded.

The Australian Government is exploring options for a new national Indigenous representative body. There is strong support for 50-50 representation between women and men on this body.

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<sup>36</sup> Consultation participant.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government support a national Indigenous representative body that encourages and supports the full participation of Aboriginal and Torres Strait Islander women through a mechanism of equal representation (50/50).**

## **Lack of consultation with women in the Northern Territory Intervention**

As discussed above under Articles 1-3, there has been a general lack of community consultation about the Northern Territory Intervention.<sup>37</sup> This lack of consultation is magnified in the case of Aboriginal and Torres Strait Islander women, who are already marginalised from the political arena, and who were given little opportunity to voice their opinion on Intervention measures aimed at improving their situation.

In response to the criticism of the top-down implementation of the Northern Territory Intervention measures and the independent review recommendations, the Australian Government has agreed to the advice 'to reset their relationship with Indigenous people based on genuine consultation, engagement and partnership.'<sup>38</sup> This involves a commitment to strengthening local leadership and fostering participation within communities.<sup>39</sup> This is welcome development and we hope it may provide an important opportunity for Aboriginal and Torres Strait Islander women to be heard.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government engage in genuine consultation with Aboriginal and Torres Strait Islander women about the Northern Territory Intervention measures.**

## **Aboriginal and Torres Strait Islander women at all levels of public and political participation**

At the time of writing this report, there are six Aboriginal women in state and territory parliaments in Australia. These women include Linda Burney in New South Wales; Caroline Martin in Western Australia; and Marion Scrymgour and Alison Anderson in the Northern Territory. Alison Anderson is the Northern Territory Minister for Natural Resources, Environment and Heritage, Minister for Parks and Wildlife, Minister for Arts and Museums, and Minister for Indigenous Policy. Linda Burney is the current New South Wales Minister for Community Services. Until early 2009 Marion Scrymgour was the Deputy Chief Minister of the Northern Territory, however she stepped down from this role for health and family reasons.<sup>40</sup>

Aboriginal and Torres Strait Islander land and community councils continue to be dominated by men. Where women are elected to these bodies, inevitably decision-

<sup>37</sup> NTER Review Board Report, above n 29.

<sup>38</sup> Hon Jenny Macklin (Press release, 23 October 2008), above n 29.

<sup>39</sup> Ibid.

<sup>40</sup> Lindsay Murdoch, 'Marion Scrymgour quits cabinet', *The Age* (Melbourne), 10 February 2009, <<http://www.theage.com.au/national/marion-scrymgour-quits-cabinet-20090209-82e3.html>>

making continues to be dominated by men. The men are usually considered to be the community representatives and are therefore the ones that communicate with governments.

### **Aboriginal and Torres Strait Islander women in the public service**

Public service employment strategies including affirmative action have proved effective, with Aboriginal and Torres Strait Islander women making up 2.5 per cent of the Australian Public Service and 2.5 per cent of Senior Executive positions in the Australian Public Service.<sup>41</sup>

The majority of Aboriginal and Torres Strait Islander women in the Australian Public Service work in the lower levels of the Service. Figures show that very few exceed past Australian Public Service Level 5/6 or into Senior Executive Positions.<sup>42</sup>

Women have told us that despite the advances that have been achieved in employing women in public service positions, more could be done to target affirmative action training and employment programs specifically for Aboriginal and Torres Strait Islander women.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government takes steps to introduce temporary special measures that promote the recruitment, training and mentoring of Aboriginal and Torres Strait Islander women in key employment areas**

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<sup>41</sup> Australian Government Report, above n 22, 25.

<sup>42</sup> Ibid.

## 14. Article 8: International participation

### Challenges in implementing Article 8

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#### **Effect of abolition of ATSIC on opportunities for international participation**

Through the former Aboriginal and Torres Strait Islander Commission (ATSIC), Aboriginal and Torres Strait Islander women could participate at an international level.

Our voice could be heard through our involvement in the United Nations treaty monitoring process, briefing UN committees, and Indigenous treaty forum preparations.

The abolition of ATSIC means that opportunities for Aboriginal and Torres Strait Islander women to participate in international forums are extremely limited.

Aboriginal and Torres Strait Islander people involved in consultations about a new national Indigenous representative body identified 'representing Aboriginal and Torres Strait Islander peoples at the international level' as an important role and function for the representative body.<sup>43</sup> We hope that the new representative body may provide increased opportunities for our women to participate at an international level.

We recommend that the CEDAW Committee:

**Recommend that the new national Indigenous representative body include mechanisms to ensure equal participation and representation of Aboriginal and Torres Strait Islander women and men in international forums.**

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<sup>43</sup> Australian Human Rights Commission, above n 18, 3

## 15. Article 10: Education

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### CEDAW Committee consideration of these issues in 2006

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The CEDAW Committee has expressed concern that education is one of the areas where ongoing inequalities are suffered by Aboriginal and Torres Strait Islander women.<sup>44</sup>

### Positive developments

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#### Closing the gap targets

As part of its commitment to 'Closing the gap' on Aboriginal and Torres Strait Islander disadvantage, the Council of Australian Governments (**COAG**) committed to the following education targets to reduce the disadvantage gap between Aboriginal and Torres Strait Islander and non-Indigenous Australians:

- Within five years: all Indigenous four year olds in remote Indigenous communities will have access to a quality early childhood education program.
- Within a decade: halve the gap in reading, writing and numeracy achievements by Indigenous children.
- Within a generation: at least halve the gap for Indigenous students in Year 12 or equivalent attainment rates by 2020.<sup>45</sup>

While these recommendations are a laudable advance, we are concerned to ensure that in their implementation Aboriginal and Torres Strait Islander boys and girls achieve equal outcomes.

#### Student retention rates

In 2008, the retention rates for Aboriginal and Torres Strait Islander full-time school students, from Year 7/8 to Year 12 were much lower than for non-Indigenous full-time school students (46.5% and 75.6% respectively). However, the Indigenous rate rose by 3.6% in comparison to 2007, while the non-Indigenous rate was unchanged.<sup>46</sup>

While we welcome these advances, we are concerned to ensure that data be further disaggregated so as to enable the Government to track the graduation rates for boys and girls. If girls are under-represented the Government should ensure that remedial measures are implemented.

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<sup>44</sup> CEDAW Committee Concluding Comments, above n 5, [30].

<sup>45</sup> Australian Government Report, above n 22, [2.41].

<sup>46</sup> Australian Bureau of Statistics, *Schools, Australia, 2007*, (Canberra, 2008), Catalogue No. 4221.0, , 4.

## Challenges in implementing Article 10

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We are concerned that educational outcomes for our children continue to be woefully inadequate. In the words of one of our forum participants, Australian education systems are 'failing our children'.

Aboriginal and Torres Strait Islander children have lower levels of access to education from pre-school through to tertiary levels. Our children have lower levels of literacy and numeracy, which affects everything they do in life. They attend school less for a variety of social and economic reasons related to entrenched discrimination and disadvantage. Fewer Aboriginal and Torres Strait Islander students complete school when compared with other groups in Australia: our children are still only half (49%) as likely as non-Indigenous students to complete secondary school.<sup>47</sup> In most cases, we must send our children to mainstream schools that do not adequately take account of our cultures and languages.

### Reading, writing and numeracy figures

Aboriginal and Torres Strait Islander students do less well at school than other Australian students. The Productivity Commission said:

Three times as many Indigenous children fail to reach the minimum standards for reading, writing and numeracy in year 3. The gap gets worse in later years in school for reading and numeracy. Separate information is not available for girls and boys.<sup>48</sup>

As with many other statistics, the statistics on numeracy and literacy have been disaggregated only by sex or race. As a result, we cannot find out the numeracy and literacy achievements of Aboriginal and Torres Strait Islander girls.

### School enrolment and attendance

School attendance among Aboriginal and Torres Strait Islander students is still a serious concern and poses considerable barriers to achieving at school. There is evidence that school attendance by Aboriginal and Torres Strait Islander children at primary school level is already below that of non-Indigenous children and that this gap widens progressively as the students move into secondary school. Gary Banks, Chairman of the Australian Government Productivity Commission, recently summarised the issue:

For many years, it has been observed that rates of enrolment and attendance at school have been low for Indigenous children. But there have been no nationally consistent data available to verify or monitor this. So it is a step forward that this year's [*Overcoming Indigenous Disadvantage Key Indicators 2009*] Report has been able to include attendance data for the first time. These data confirm that attendance rates for Indigenous students are indeed lower than for other students, with the differences widening at high-level years. The differences, while significant — particularly in those

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<sup>47</sup> Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, (Canberra, 2008), Catalogue No 4704.0, 7. (**ABS Health and Welfare Report 2008**)

<sup>48</sup> Australian Government Productivity Commission Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009 Fact Sheet: Women, men and children* (2009) (**Productivity Commission 2009 Fact Sheet: Women, men and children**), 3, <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0005/90185/02-women-men-children.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0005/90185/02-women-men-children.pdf)>.

jurisdictions with more remote communities — are not as great as some had anticipated. However, the data only relate to students who are enrolled; other data indicate that a larger proportion of Indigenous children are not even enrolled in school.<sup>49</sup>

Aboriginal and Torres Strait Islander girls may attend school less as a result of their increased family responsibilities. However, as the data is not disaggregated according to sex or region we cannot find out the level of disadvantage that our girls and women experience by missing out on school.

We recommend that the CEDAW Committee:

**Recommend that to improve educational outcomes for Aboriginal and Torres Strait Islander children, the Australian Government ensure that data relating to numeracy, literacy and school attendance be disaggregated by sex, ethnicity, ability, age and geographical location.**

### **Culturally appropriate schools and ways of teaching**

Aboriginal and Torres Strait Islander students need culturally appropriate schools and ways of teaching. Some forum participants expressed the need for consultation with local Aboriginal and Torres Strait Islander communities, including elders, parents and grandparents when developing school curriculums. Throughout consultations Aboriginal and Torres Strait Islander women told us that Aboriginal and Torres Strait Islander people need to be employed in the education system, from pre-school through to senior education departmental positions. As one participant said:

Without language and identity - taught by our own Koorie people to our Koorie children, the school system will not change.

Aboriginal and Torres Strait Islander women report that in some remote communities, schools are staffed by inexperienced teachers merely doing a temporary 'country stint' before being able to move to a more desirable post in the city. These teachers often have no background or special training in teaching Aboriginal and Torres Strait Islander children. This often leads to our children in communities having fewer opportunities to achieve good academic outcomes.

We recommend that the CEDAW Committee:

**Recommend that, consistent with Articles 4 and 10, the Australian Government and state and territory governments develop a national strategy for increasing the numbers of Aboriginal and Torres Strait Islander people employed in the education sector.**

**Recommend that such a national strategy recognise the particular family and community commitments of Aboriginal and Torres Strait Islander people and create flexible employment arrangements (such as part-time work and job sharing) to allow for those commitments.**

<sup>49</sup> Gary Banks, Chairman, Australian Government Productivity Commission, 'Are we overcoming Indigenous disadvantage?', (Speech delivered at the National Library, Canberra, 7 July 2009), 7, <<http://www.pc.gov.au/speeches/cs20090707-overcoming-indigenous-disadvantage>>

## Extinction of Aboriginal and Torres Strait Islander languages

We are concerned about the survival of our languages.

In October 2008, the Northern Territory Government announced a new policy requiring the first four hours of education in all Northern Territory schools to be conducted in English.<sup>50</sup> In response, the Federation of Aboriginal and Torres Strait Islander Languages has petitioned the Australian Government to improve measures to preserve native languages and is seeking a national inquiry into the issue.<sup>51</sup>

The United Nations Educational, Scientific and Cultural Organization has stated that more than 100 languages in Australia are in danger of extinction.<sup>52</sup> We fear that the new Northern Territory Government policy will further endanger Indigenous languages.<sup>53</sup>

Given the central importance of language to the maintenance of Aboriginal and Torres Strait Islander cultures and customs, the policy of forcing education in schools to be conducted in English has the potential to seriously threaten the existence of many Aboriginal and Torres Strait Islander languages and raises concerns in relation to Article 13 of CEDAW, together with Articles 1, 2, 13 and 15 of the ICESCR.

### Early childhood

We are concerned that the provision of early childhood care and education for children in Aboriginal and Torres Strait Islander communities is extremely inadequate. People in remote areas are particularly disadvantaged as there are often not enough trained staff to provide the services.

Recently, the Australian Government committed to have every Indigenous four-year-old in a remote Indigenous community enrolled in and attending a proper early childhood education centre or opportunity, and engaged in proper pre-literacy and pre-numeracy programs over the next five years.<sup>54</sup> This will be a huge challenge. As some forum participants pointed out:

Communities are unable to have sufficient [school] teaching staff let alone early childhood staff.<sup>55</sup>

### Young mothers

Aboriginal and Torres Strait Islander women often become mothers at a younger age than other Australians. Many of our women are unable to finish secondary school or continue on to further education because of a lack of affordable childcare.

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<sup>50</sup> Northern Territory Government, 'Education Restructure Includes Greater Emphasis on English,' (Press release, 14 October 2008), <<http://newsroom.nt.gov.au/index.cfm?fuseaction=viewRelease&id=4599&d=5>>.

<sup>51</sup> 'Govt petitioned to preserve Indigenous languages,' *ABC News*, (18 November 2008), <<http://www.abc.net.au/news/stories/2008/11/18/2423386.htm>>

<sup>52</sup> 'Indigenous languages under threat, UN finds,' *ABC News*, (21 February 2009), <<http://www.abc.net.au/news/stories/2009/02/21/2497718.htm>>

<sup>53</sup> 'Linguists fear Indigenous language extinctions,' *ABC News*, (1 March 2009), <<http://www.abc.net.au/news/stories/2009/03/01/2504357.htm>>

<sup>54</sup> Apology to Australia's Indigenous Peoples, above n 8.

<sup>55</sup> Information provided by participants at Sydney consultation forum.

## Extreme racism in schools and other educational institutions

We and our children experience extreme racism in schools, both from other students, and from teachers who on occasion are culturally ignorant, racist, and ill-equipped to teach Aboriginal and Torres Strait Islander students.<sup>56</sup>

The experience of racism extends beyond primary and secondary school. Indigenous law students have reported experiences of racism on campus from other students and from paternalistic lecturers.<sup>57</sup> Indigenous academics in law faculties experience similar racist attitudes.<sup>58</sup>

## Post-school education

Aboriginal and Torres Strait Islander people are less likely to have a post-school qualification than non-Indigenous people. In 2007, only 26% of Aboriginal and Torres Strait Islander people had a qualification past year 12, such as successful completion of vocational education and training and/or higher education at universities. This figure compares to 53% of non-Indigenous people.<sup>59</sup> Aboriginal and Torres Strait Islander women are also more likely than Aboriginal and Torres Strait Islander men to be neither employed nor studying.<sup>60</sup>

## Barriers to continuing education

There are many barriers for our women continuing their education past school. These barriers include fees, child care costs and the availability and inadequacy of student support payments for women providing for a family. For those women that do continue, some cannot choose to work in community based organisations, where pay rates are usually lower, because they need to pay off Higher Education Contribution Scheme (HECS) debts built-up while studying.

## Transition to higher education

In 2006, only one-third (32 per cent) of Aboriginal and Torres Strait Islander students attending government schools undertook a year 11 to 12 course aimed at gaining university entrance. This compares with 78 per cent of non-Indigenous students.

Of these Aboriginal and Torres Strait Islander students, only 11 per cent achieved a score sufficient to gain them university entrance, compared to 47 per cent of non-Indigenous students.

Aboriginal and Torres Strait Islander students are more likely to participate in vocational education and training (VET). Some 30 per cent of Aboriginal and Torres Strait Islander students gained a VET certificate while at school, compared to 25 per cent of non-

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<sup>56</sup> Australian NGO Shadow Report on the Implementation of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), (Melbourne, WRANA, October 2005), [390] (**Australian Indigenous Women's NGO Report**).

<sup>57</sup> P Falk, 'Law School and the Indigenous Student Experience', (2005) 6(8) *Indigenous Law Bulletin*.

<sup>58</sup> H McGlade, 'The Day of the Minstrel Show', (2005) 6(8) *Indigenous Law Bulletin*.

<sup>59</sup> ABS Health and Welfare Report 2008, above n 47.

<sup>60</sup> Australian Government Productivity Commission, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2007* (2007), 41, <<http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2005>>, (**Productivity Commission 2007 Overview**)

Indigenous students. Also, more than half of Aboriginal and Torres Strait Islander students (54 per cent) gained a VET Statement of Attainment.<sup>61</sup> Aboriginal and Torres Strait Islander men are more likely than women to study towards a trade qualification. Aboriginal and Torres Strait Islander men attained a Certificate level III/IV at almost twice the rate of Aboriginal and Torres Strait Islander women (63% compared with 34%) in 2008.

Aboriginal and Torres Strait Islander women perform better in higher education than Aboriginal and Torres Strait Islander men. For example, the majority of those with higher level degrees (i.e. above the Certificate level) were women. Also, Aboriginal and Torres Strait Islander women were twice as likely as Aboriginal and Torres Strait Islander men to have an Advanced Diploma or Diploma (22% compared with 12%) and more than one-and-a-half times as likely to have a Bachelor degree or above (26% compared with 15%).<sup>62</sup> However, these achievements in higher education are not leading to higher employment rates for our women.

### **Vocational training and transition to work**

Aboriginal and Torres Strait Islander people aged 25–64 years who had a non-school qualification of a Certificate III or above were more than twice as likely as those with no qualification to be employed full-time (52% compared with 23%).

However, Aboriginal and Torres Strait Islander women with a Certificate III or above were less likely than Aboriginal and Torres Strait Islander men with the same level of qualification to be employed full-time, and were around twice as likely to be employed part-time or not be participating in the labour force. This reflects the fact that many women in this age group are likely to be caring for children full-time, or combining childcare with part-time employment.<sup>63</sup>

Our women's employment opportunities are limited as we carry the main workload in caring for children and running households, and don't have access to affordable, reliable childcare.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government support and fund culturally and linguistically appropriate education programs in schools for Aboriginal and Torres Strait Islander children. This must include appropriate training for teachers.**

**Recommend that the Australian Government support and fund community programs to assist young Aboriginal and Torres Strait Islander mothers to stay at school.**

**Recommend that the state and territory governments adequately fund Aboriginal and Torres Strait Islander independent schools, including funding to address the impact of complex, intergenerational issues of discrimination.**

<sup>61</sup> Ministerial Council on Education, Employment, Training and Youth Affairs, 'Chapter 8: Indigenous Education', *National Report on Schooling in Australia 2006*, available at [http://cms.curriculum.edu.au/anr2006/ch8\\_senior.htm](http://cms.curriculum.edu.au/anr2006/ch8_senior.htm)

<sup>62</sup> ABS Health and Welfare Report 2008, above n 47, 18.

<sup>63</sup> Ibid, 21.

**Recommend that all Australian governments take positive and necessary measures to ensure that Aboriginal and Torres Strait Islander people enjoy the right to identity and culture, including through the maintenance and use of their traditional languages.**

## 16. Article 11: Employment/work

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### CEDAW Committee consideration of these issues in 2006

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The CEDAW Committee has expressed concern that employment is one of the areas where ongoing inequalities are suffered by Aboriginal and Torres Strait Islander women.<sup>64</sup>

### Positive developments

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#### **Small rise in Aboriginal and Torres Strait Islander employment rate**

Although new figures show the employment rate rose from 43 per cent to 48 percent among Aboriginal and Torres Strait Islander people in the five years from 2001 to 2006, the rate remained 24 percent behind non-Indigenous Australians.<sup>65</sup>

The Productivity Commission tells us that:

Employment as a proportion of the population has increased for Indigenous people. In 2006, 53 per cent of Indigenous males and 43 per cent of Indigenous females were employed (increasing from 49 per cent and 38 per cent in 2001). However, a much higher proportion of non-Indigenous males and females were employed.

Unemployment has fallen. From 2001 to 2006, the unemployment rate fell to 16 per cent for Indigenous men and 15 per cent for Indigenous women (from 22 per cent for men and 18 per cent for women in 2001). The rate for non-Indigenous men and women was 5 per cent in 2006.<sup>66</sup>

The Chairman of the Australian Government Productivity Commission has expressed concern about whether the improvement in Aboriginal and Torres Strait Islander employment rates and average incomes in the period to 2006 will be sustained during the global financial crisis. The Chairman has recently said:

The improvement is probably best interpreted as Indigenous people sharing in the benefits of buoyant economic times, as the gap with the rest of the Australian community did not get any smaller in that period. It may also prove challenging to hold this ground in the more difficult economic times ahead.<sup>67</sup>

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<sup>64</sup> CEDAW Committee Concluding Comments, above n 5, [31].

<sup>65</sup> Narushima and Murphy, above n 3, 4.

<sup>66</sup> Productivity Commission 2009 Fact Sheet: Women, men and children, above n 48, 4.

<sup>67</sup> Banks, above n 49, 4.

## Challenges in implementing Article 11

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### High unemployment

Unemployment rates for our women remain unacceptably high and discrimination, lack of education and opportunities are very real barriers to employment.

The participation of Aboriginal and Torres Strait Islander people in the labour force is low in general. This situation is magnified in the case of women as the employment rate for Aboriginal and Torres Strait Islander women in 2007 was only 47.9% compared to 65.1% of Aboriginal and Torres Strait Islander males.<sup>68</sup> The unemployment rate for Aboriginal and Torres Strait Islander people in 2006 was 16% compared to 5% for non-Indigenous people, with women having a slightly higher unemployment percentage than men.<sup>69</sup>

The Australian Government has initiated a new strategy, the Indigenous Economic Development Strategy, to address Aboriginal and Torres Strait Islander unemployment and to help Aboriginal and Torres Strait Islander peoples to achieve economic independence.

Gender analysis is needed to address the unique challenges Aboriginal and Torres Strait Islander women face in finding work. Our women face discrimination on the basis of their gender, race and culture. These multiple levels of discrimination, combined with the low education levels and lack of availability of jobs in Aboriginal communities, makes the problem of finding work especially challenging for Aboriginal and Torres Strait Islander women.

Major factors hindering Aboriginal and Torres Strait Islander women from accessing paid employment include: the casualisation of many jobs in female dominated areas; increasingly unreasonable hours; the difficulty in managing the work/life balance; lack of appropriate and accessible education and training opportunities; our women's experience of racism in every facet of their lives; and geographical remoteness for women in some communities. Aboriginal and Torres Strait Islander women often lack opportunities to break into paid employment, and face discrimination by employers when they do enter the paid work force.<sup>70</sup> As noted above (Article 10) our women now have higher rates of tertiary education than Aboriginal and Torres Strait Islander men, and yet they remain under-employed or unemployed at much higher rates.

### Community Development Employment Projects (CDEP)

The Community Development Employment Projects (CDEP) is an Australian Government-funded program that is meant to provide activities for unemployed Aboriginal and Torres Strait Islander people to develop work skills and move into employment. For statistical purposes, the Australian Bureau of Statistics classifies CDEP participants as employed rather than as unemployed or not in the labour force. Many of the 'activities' are in fact essential roles in municipal services, health care, community services, education and other sectors that would be considered employment

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<sup>68</sup> Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, 2007*, (Canberra, 2008), CatalogueNo. 6287.0

<sup>69</sup> ABS Health and Welfare Report 2008, above n 47, xxi.

<sup>70</sup> Women's Rights Action Network Australia, *Our Rights, Our Voices: The Western Australian Community Report on Women*, (2004),.24.

in mainstream communities and organisations. Paragraphs 9.48 and 9.49 of Australian Government Report discuss CDEP.

CDEP participants do not receive paid leave such as sick leave, maternity leave, annual leave, carers leave or bereavement leave. They have no recourse to 'unfair dismissal' remedies, and are paid less than other Australian workers.

There are mixed views among Aboriginal and Torres Strait Islander people about CDEP programs, ranging from positive to extremely fraught. In many cases people have reported that their CDEP jobs have provided little in the way of practical or useful job skills with limited job satisfaction. Others report being trapped in CDEP positions and being unable to secure full paid employment or access to further training despite many years of experience. For example, we received reports of people working as teachers aids or health assistants in remote communities for up to 30 years, without being given the opportunity to extend their skills and become teachers or health professionals. Many CDEP positions also require Aboriginal and Torres Strait Islander women to carry out great responsibilities, and to work in unsafe conditions, such as women who run community patrols at night, or staff safe houses and refuges.<sup>71</sup>

The Australian Government recently announced that the CDEP program will cease in areas with established economies from 1 July 2009.<sup>72</sup> A reformed CDEP program will continue to operate in communities where there are limited economic opportunities.<sup>73</sup> The Government is encouraging CDEP participants to find paid jobs through the Indigenous Employment Program and the new Employment Service providers, even if they have to travel further from their communities to work.<sup>74</sup> Indigenous Affairs Minister Jenny Macklin said of the changes:

We've massively expanded the Indigenous Employment Program ... that is all about making sure we get people work ready, that we get people not having to rely on CDEP wages.<sup>75</sup>

There is confusion and concern within communities about the future of CDEP programs and the security of many CDEP positions. As one forum participant said:

Reforms need to recognise that Aboriginal and Torres Strait Islander women may value part-time work (flexibility for family and cultural purposes) but **not** the impoverishment income of 'work for the dole' and not dead-end jobs with no genuine employment pathways.

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<sup>71</sup> *Women's Rights Action Network Australia*, above n 70, 16.

<sup>72</sup> Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs and Hon. Brendan O'Connor MP, Minister for Employment Participation, 'Strengthening Indigenous employment opportunities' (Press Release, 19 December 2008), <[http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indig\\_employ\\_19dec08.htm](http://www.fahcsia.gov.au/internet/jennymacklin.nsf/content/indig_employ_19dec08.htm)> at 20 July 2009.

<sup>73</sup> *Ibid.*

<sup>74</sup> Meg Purtell, 'Aboriginal council battles govt over CDEP decision', *ABC News* (14 April 2009), <<http://www.abc.net.au/news/stories/2009/04/14/2542852.htm>>; The Hon Jenny Macklin, 'Improving Indigenous employment services in NT' (Press Release, 19 March 2009), <[http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/improving\\_indigenous\\_employment\\_19mar09.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/improving_indigenous_employment_19mar09.htm)> at 20 July 2009; Department of Families, Housing, Community Services and Indigenous Affairs, 'Community Development Employment Projects (CDEP)' (2009), <[http://www.fahcsia.gov.au/internet/fahcsinternet.nsf/indigenous/programs-cdep\\_intro.htm](http://www.fahcsia.gov.au/internet/fahcsinternet.nsf/indigenous/programs-cdep_intro.htm)>.

<sup>75</sup> Meg Purtell, 'Aboriginal council battles govt over CDEP decision', *ABC News* (14 April 2009), <<http://www.abc.net.au/news/stories/2009/04/14/2542852.htm>>.

Aboriginal and Torres Strait Islander women need programs that link women with training and education providers and job suppliers. Two programs initiated through the Northern Territory Intervention measures aimed at addressing the lack of available training and jobs are the Community Employment Brokers and the Job Network Services.<sup>76</sup> According to the Northern Territory Emergency Response Review neither program has had a significant impact on the unemployment situation, and their effectiveness within the community has been questioned.<sup>77</sup>

### **CDEP in the Northern Territory**

The work roles available for women have been affected by the phasing out and subsequent reinvigoration of the Community Development Employment Projects (CDEP) in the Northern Territory.<sup>78</sup> CDEP provides an important opportunity for women to contribute to the well-being of their communities, however, as noted above, the program can be exploitative and counterproductive in that women spend their entire life on CDEP and never transfer to full paying jobs with benefits.

### **Employment in the private sector**

Throughout our consultations, Aboriginal and Torres Strait Islander women reported concerns about the challenges of working in the private sector. As well as discrimination when seeking a private sector job, many women also reported that they were discriminated against when it came to promotions once they had a job. One participant told us:

I was unable to find work experience within my local area due to the fact that I am an Indigenous woman. How can Indigenous women increase their qualifications if they are unable to access training and education? ... My problems gaining work experience due to the fact I am an Indigenous woman prove that this issue is still very current in and relevant to Australia in 2009.

Several women in our consultations said there was a need for governments to help create career pathways for Aboriginal and Torres Strait Islander people, including through affirmative action programs and encouraging cultural awareness and flexible working conditions in the private sector. Another participant said:

Indigenous women need to be able to develop skills across all sectors so they too can become employers. If they become employers it will help break the discrimination cycle.

### **High levels of unpaid and volunteer work**

Aboriginal and Torres Strait Islander women do huge amounts of unpaid work as carers for children, relatives with disabilities, and elderly relatives. There are frequently no alternatives for the provision of these services in our communities. Our women also play central roles in their communities by volunteering in a great variety of community based agencies and services. This unpaid work is essential to the continued functioning of many communities, but is rarely acknowledged or financially recognised. The burden of unpaid work greatly diminishes the capacity for Aboriginal and Torres Strait Islander women to participate in paid work and community leadership roles.

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<sup>76</sup> NTER Review Board Report, above n 29, [2.3].

<sup>77</sup> Ibid.

<sup>78</sup> Ibid, [2.1].

## Conditional nature of social security payments: Welfare to Work

The Welfare to Work program is an Australian Government program designed to wean those receiving social security payments back into employment. The Welfare to Work program has been punitive and has unfairly impacted on Aboriginal and Torres Strait Islander people. The program has a "3 strikes and you're out" regime, which means that if you fail to participate in the program three times in a 12-month period, your social security payments will not be paid for eight weeks. Until recently, there was no discretion as to whether the eight week non-payment penalty was applied. New provisions, which came into effect on the 1 July 2009, now allow some discretion and flexibility when applying the non-payment penalty. Centrelink will be able to consider factors such as reasonable excuse, financial hardship and compliance with a serious breach requirement in determining non-compliance.

Increased flexibility in administering these penalties is a welcome change. Research by the Australian Council of Social Services shows that 1 in 3 individuals and their families become homeless as a direct consequence of social security payments being cut off for eight weeks.<sup>79</sup> The Salvation Army reports that 11 per cent of people admit to engaging in crime or prostitution to survive eight weeks without payment.<sup>80</sup> Aboriginal and Torres Strait Islander people are over-represented among those who have their social security benefits cut-off. These punitive conditions affect the ability of Aboriginal and Torres Strait Islander women to care for their children and families. We hope that the new discretion will help our women, particularly in light of the significant unpaid work Aboriginal and Torres Strait Islander women do in the community. The effect of the Welfare to Work changes on single parent women generally is discussed in the Australian NGO Report.

## Conditional nature of social security payments under the Northern Territory Intervention

Under the compulsory income management regime introduced by the Northern Territory Intervention, money in an 'income management account'.<sup>81</sup> can only be spent on 'priority needs', such food, clothing, household items, household utilities, childcare and development, education and training.<sup>82</sup> Income quarantining in the Northern Territory applies to all people receiving social security payments that live in a 'prescribed area'.<sup>83</sup> In contrast, outside the 'prescribed areas', income quarantining can only be triggered by factors such as risk of neglect or abuse or inadequate school attendance, which is assessed on a case by case basis.<sup>84</sup>

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<sup>79</sup> 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>>.

<sup>80</sup> Ibid.

<sup>81</sup> Division 4 and Division 5, Subdivision A of the *Social Security (Administration) Act 1999* (Cth) ('Social Security Administration Act').

<sup>82</sup> Section 123TH of the Social Security Administration Act.

<sup>83</sup> Section 123UB of the Social Security Administration Act. A 'relevant Northern Territory area' includes prescribed areas under the NTNER Act and certain specified places: See s. 123TD of the Social Security Administration Act.

<sup>84</sup> The income management scheme also applies nationally where state or territory child protection officers refer a person to Centrelink because their child is considered to be at risk of neglect or abuse; a person's child does not meet school enrolment and attendance requirements; or a person, subject to the jurisdiction of the Queensland Commission is recommended for income management; or the person is subject to the voluntary income management agreement is in force. See ss. 123UC to UFA of the

Compulsory income management has been criticised as ‘an intrusive law that has been applied in a top down way almost exclusively to Aboriginal people.’<sup>85</sup> The absence of any criteria apart from race (which in practical terms coincides with a person receiving social security in a prescribed area) for the application of income quarantining raises serious concerns with both Articles 1 and 11 of the CEDAW.

Under the Intervention, social security payments are now also linked directly to children’s school attendance. This can badly affect Aboriginal and Torres Strait Islander women, particularly those running a single parent home.

Income management has proved a difficult program for many of our women to adopt. According to the Alice Springs Women’s Shelter many women required significant support in the ‘explanation of the process, how to access quarantined monies and especially the movement of money from remote communities to town facilities’.<sup>86</sup> Also, women on income management have to interact with Centrelink on a more regular basis. This causes problems for our women as perpetrators of violence target women at Centrelink.<sup>87</sup>

### **Superannuation and pensions**

Superannuation (the mandated compulsory retirement saving scheme for workers in paid employment) is available to fully retired workers over the age of 60 years (if born after July 1960) or over the age of 55 years (if born before July 1960).

The Australian Government recently announced that it will begin increasing the Age Pension age in six-monthly increments from 65 in 2017 to 67 by 2023. The pension age is when you become eligible for government pension benefits depending on your income and assets. In defence of the increased age of eligibility the Government stated:

As Australians are healthier and living longer, the qualifying age for Age Pension for men and women will be increased by six months every two years, commencing from 1 July 2017 and reaching 67 on 1 July 2023. The reforms are necessary to prepare Australia for the challenges of the future...Increasing the age pension age is a responsible reform to meet the challenge of an ageing population and the economic impact it will have for all Australians.

As we know, our women are not healthier and living longer. Our life expectancy means that we will be lucky to reach an age where we are eligible for the Age Pension or superannuation.

Even if an Aboriginal and/or Torres Strait Islander woman does live beyond the life expectancy age, the pension and superannuation are currently structured in ways that provide little, if any, practical benefit for us. The accrual of enough superannuation for retirement purposes depends upon long, unbroken periods of work paid at above the average wage, which many of our women do not experience.

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Social Security Administration Act. This case by case approach stands in stark contrast to the scheme as it applies to people living in prescribed areas.

<sup>85</sup> Sean Brennan, *Gilbert and Tobin Submission to the NTER Review* (22 August 2008), 16, <[http://www.gtcentre.unsw.edu.au/news/docs/Submission\\_NTER\\_Review\\_Board.pdf](http://www.gtcentre.unsw.edu.au/news/docs/Submission_NTER_Review_Board.pdf)>.

<sup>86</sup> Alice Springs Women’s Shelter, *Submission to the Northern Territory Emergency Response Review* (2008), <[http://www.nterreview.gov.au/subs/nter\\_review\\_report/154\\_alice\\_springs\\_women/154\\_Alice\\_Spring\\_s\\_Women.htm](http://www.nterreview.gov.au/subs/nter_review_report/154_alice_springs_women/154_Alice_Spring_s_Women.htm)>.

<sup>87</sup> Ibid.

The current system fails to assist many Aboriginal and Torres Strait Islander women at all. The age pension and superannuation should be available to Aboriginal and Torres Strait Islander women at an age that matches life expectancy and gives them a comparable period of life devoted to retirement activities.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government give consideration to a census approach, similar to the model used in New Zealand, to investigate the levels of unpaid and volunteer work amongst Aboriginal and Torres Strait Islander women.**

**Recommend that the Australian Government take steps to implement a system to ensure that access to the Age Pension and superannuation is available to Aboriginal and Torres Strait Islander women at an age that matches their life expectancy and guarantees a comparable period of life to be devoted to retirement activities.**

## 17. Article 12: Health

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### CEDAW Committee consideration of these issues in 2006

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In 2006 the CEDAW Committee expressed concern about the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women. The Committee said that Aboriginal and Torres Strait Islander women's enjoyment of human rights was unsatisfactory in a number of areas, including health.<sup>88</sup>

There is still a severe health crisis for our people. Many Aboriginal and Torres Strait Islander women experience living and health conditions usually associated with the developing world, rather than a wealthy nation like Australia.

### Challenges in implementing Article 12

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#### **Snapshot of Aboriginal and Torres Strait Islander women's health**

Aboriginal and Torres Strait Islander people have higher levels of ill health, disease and death rates across all age groups.

##### **Life expectancy**

Aboriginal and Torres Strait Islander women live shorter lives than non-Indigenous women. Life expectancy at birth for Aboriginal and Torres Strait Islander women is 72.9 years of age compared with 82.6 years for non-Indigenous women — a gap of 9.7 years. Life expectancy at birth for Aboriginal and Torres Strait Islander men is 67.2 years. For non-Indigenous men it is 78.7 years — a gap of 11.5 years.<sup>89</sup>

Halving the gap in life expectancy for Aboriginal and Torres Strait Islander people within a generation is a COAG target.

##### **Reproductive and maternal health**

Aboriginal and Torres Strait Islander women who live in remote communities often have to leave their communities and travel to a large town or city to give birth. Anecdotally we know that unless the woman is very young, she will not be accompanied by any family members because of the cost of travelling and living away from home. This situation places a great deal of stress on the mother and the family left behind.

Almost one quarter of people in rural Aboriginal and Torres Strait Islander communities may be infected by sexually transmissible infections (STIs).<sup>90</sup> Sexually transmitted infections can cause poor health, infertility and ectopic pregnancies in our women.<sup>91</sup>

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<sup>88</sup> CEDAW Committee Concluding Comments, above n 5, [28].

<sup>89</sup> Productivity Commission 2009 Fact Sheet: Women, men and children, above n 48, 2.

<sup>90</sup> FJ Bowden and K Fethers, '“Let's not talk about sex”: reconsidering the public health approach to sexually transmissible infections in remote Indigenous populations in Australia' (2008) 188 *The Medical Journal of Australia*, 620.

<sup>91</sup> *Ibid.*

Screening programs have seen some success in detection and treatment of STIs, but a more comprehensive health program is needed to provide more Aboriginal and Torres Strait Islander women with access to appropriate primary health care.<sup>92</sup>

### **Disability and Chronic diseases**

Our people have significantly higher rates of disability and chronic disease than non-Indigenous Australians. Chronic disease (cardiovascular disease, kidney problems and diabetes), injuries and respiratory infections account for 75% of the life expectancy gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians. Cardiovascular disease is the largest contributor and a major driver of the life expectancy gap.<sup>93</sup> As one forum participant told us:

...everyone in our community is either diabetic or on dialysis.

### **Mental health and emotional and social well-being**

Poor mental health and wellbeing is a significant and extremely serious health issue facing Aboriginal and Torres Strait Islander women. Our women continue to suffer extremely high levels of mental illness and psychological distress as a result of things like domestic violence, physical health problems, imprisonment, family breakdown and social disadvantage.

The Productivity Commission Report found that Aboriginal and Torres Strait Islander people had higher treatment rates for mental health issues in community clinics, residential care facilities and hospitals compared with non-Indigenous people in 2005-06.<sup>94</sup>

### **Suicide and self-harm**

Tragically, suicide also continues to be a serious issue for our people. The Productivity Commission's 2009 report states that suicide by Aboriginal and Torres Strait Islander people is 'influenced by a complex set of factors relating to a history of dispossession and intergenerational trauma, removal from family, discrimination, resilience, social capital and socio-economic status'.<sup>95</sup>

The report showed that suicide rates were higher for Aboriginal and Torres Strait Islander people (between 10.9 and 42.2 per 100 000 population) than non-Indigenous people (between 8.3 and 15.1 per 100 000 population)

### **Ear health**

Aboriginal and Torres Strait Islander people have much higher rates of ear and hearing problems compared with the non-Indigenous population. In many cases the problems are caused by untreated otitis media (middle ear infection), which can lead to a perforated eardrum and hearing loss. In 2004–05, rates of otitis media were three times as high among Aboriginal and Torres Strait Islander children aged 0–14 years as non-

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<sup>92</sup> Ibid, 621.

<sup>93</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner and the Steering Committee for Indigenous Health Equality, Human Rights and Equal Opportunity Commission, *Close the Gap National Indigenous Health Equality Targets*, 18, <[http://www.hreoc.gov.au/Social\\_Justice/health/targets/health\\_targets.pdf](http://www.hreoc.gov.au/Social_Justice/health/targets/health_targets.pdf)>

<sup>94</sup> Productivity Commission Report, above n 2, [7.55], Box 7.7.1: Key messages..

<sup>95</sup> Ibid, [7.65].

Indigenous children. In the same year, a higher proportion of Aboriginal and Torres Strait Islander people than non-Indigenous people reported ear and hearing problems across all age groups, except for those aged 55 years and over.<sup>96</sup> The Institute for Aboriginal Development told us that 80% of Aboriginal communities in the Northern Territory have people who suffer a hearing loss at varying levels. The Institute also told us that 85% of Aboriginal children in the Northern Territory suffer from a form of hearing loss and that sign language interpreters are extremely scarce in the Northern Territory<sup>97</sup>.

## Eye health

Aboriginal and Torres Strait Islander people have much higher rates of eye and vision problems compared with the non-Indigenous population. According to the Australian Medical Association, Australia is the only developed country in the world to still have blinding endemic trachoma. This is a disease of early childhood and if left untreated can lead to significant vision impairment and blindness.<sup>98</sup> Aboriginal and Torres Strait Islander people reported having cataracts and either complete or partial blindness at higher rates than non-Indigenous people. Within the Aboriginal and Torres Strait Islander population, those living in non-remote areas were more likely to report eye and sight problems (32%) than those living in remote areas (25%).<sup>99</sup>

## Teeth

Recent figures show that:<sup>100</sup>

- The proportion of adults with untreated tooth decay was significantly higher for Aboriginal and Torres Strait Islander people than for non-Indigenous people across all age groups for 2004–2006.
- Potentially preventable hospitalisations for dental conditions were higher for Aboriginal and Torres Strait Islander people than for non-Indigenous people from 2004-05 and 2006-07.

## Health risk factors

Aboriginal and Torres Strait Islander people are more likely to have lifestyle factors associated with poor health than other Australians, such as smoking, a poor diet, high alcohol consumption and, in some communities, petrol sniffing.

### *Poor nutrition and obesity*

In 2004-05, Aboriginal and Torres Strait Islander Australians were twice as likely to be obese than other Australians.<sup>101</sup> Obesity and poor nutrition are significant contributors to ill health and premature death among Aboriginal and Torres Strait Islander people. In many cases, our people cannot afford to pay the high costs of fresh food, particularly in remote communities.

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<sup>96</sup> ABS Health and Welfare Report 2008, above n 47, 134.

<sup>97</sup> Information provided at Sydney consultation forum.

<sup>98</sup> Australian Medical Association (AMA), *2008 AMA Indigenous Health Report Card – "Ending the Cycle of Vulnerability: The Health of Indigenous Children"*, 3, <<http://www.ama.com.au/node/4335>>.

<sup>99</sup> ABS Health and Welfare Report 2008, above n 47, 133.

<sup>100</sup> Ibid

<sup>101</sup> Ibid, 2. .

### *Alcohol*

The consumption of alcohol is a complex issue for Aboriginal and Torres Strait Islander communities. While there are high rates of high risk and excessive alcohol consumption, in remote areas there are also high levels of abstinence and those who have never consumed alcohol. For example, in 2004–05, Aboriginal and Torres Strait Islander people aged 18 years and over were more likely than non-Indigenous people to not drink alcohol. Aboriginal and Torres Strait Islander people in remote areas were nearly three times as likely as those in non-remote areas to report that they have never consumed alcohol (18% compared with 6%).<sup>102</sup>

There remain serious issues concerning high risk drinking and binge drinking within Aboriginal and Torres Strait Islander communities. While binge drinking is more prevalent among Aboriginal and Torres Strait Islander men (24%) than Aboriginal and Torres Strait Islander women (15%), it still remains a significant health issue for our women.<sup>103</sup> In particular, binge drinking among men often leads to violence against our women.

### *Petrol sniffing*

Where it occurs, petrol sniffing is associated with a range of health and social harms including increased violence, acquired brain injury, property damage, child abuse and neglect, dispossession of Elders and theft.<sup>104</sup>

## **Closing the Gap health initiatives**

In November 2008, the Australian Government and state and territory governments committed a joint \$1.6 billion to improve Aboriginal and Torres Strait Islander health. This funding is one of the 'Closing the Gap' initiatives and is the biggest single injection of new funding to improve Aboriginal and Torres Strait Islander health outcomes.<sup>105</sup> It is imperative that these measures ensure that the health needs of Aboriginal and Torres Strait Islander women are particularly addressed. There are also some concerns that while the funds allocated are significant, they may not meet the considerable needs in communities.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government ensure that the health measures in the 'Closing the Gap' package ensure that Aboriginal and Torres Strait Islander women's health programs and outcomes are improved, including by collecting data disaggregated by sex, ethnicity, ability, age and geographical location.**

## **Lack of access to primary health care**

We are concerned that our women do not have access to primary health care programs having reported a lack of local access, with most health services tending to focus on problems of acute care. This is evident in the high rate of problems like dental/oral

<sup>102</sup> ABS Health and Welfare Report 2008, above n 47, 141.

<sup>103</sup> Ibid, 143.

<sup>104</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *Review of the First Phase of the Petrol Sniffing Strategy* (2008), <[http://www.facsia.gov.au/indigenous/petrol\\_sniffing\\_strategy\\_review/p02.htm](http://www.facsia.gov.au/indigenous/petrol_sniffing_strategy_review/p02.htm)>.

<sup>105</sup> Human Rights Commission, 'Health equality for Indigenous Australians a step closer: Close the Gap Coalition welcomes COAG funding', (Press release, 30 November 2008).

issues and sexually transmitted infections in Aboriginal and Torres Strait Islander women.<sup>106</sup> There is also a lack of preventative screening for diseases like cervical cancer.<sup>107</sup> General education on everyday health and well-being is needed to improve the health-status of Aboriginal and Torres Strait Islander women.<sup>108</sup>

### **Lack of accessible and culturally appropriate services**

Many Aboriginal and Torres Strait Islander women continue to have great difficulty accessing medical services. Aboriginal and Torres Strait Islander women living in regional and remote locations frequently don't have access to medical services at all. Some are forced to travel long distances to get to the available health services. The distances, travelling costs and problems with finding and paying for accommodation while away from home put some medical services beyond the reach of some of our women.

Many women have also reported instances of discrimination by health care professionals who are ignorant or careless about the cultural practices of our women.

### **Lack of translators and interpreters**

Aboriginal and Torres Strait Islander women who are deaf or whose first language is not English frequently don't have access to interpreters when seeking medical treatment or disability services. This can greatly affect the level of treatment they are able to receive. There is also a lack of translated information and educational material about health care and health services. This leaves some of our women unable to access basic health information that is freely available to non-Indigenous women in Australia.

### **Lack of Aboriginal and Torres Strait Islander doctors, nurses and health care workers**

Aboriginal and Torres Strait Islander women around Australia identified a significant lack of Aboriginal and Torres Strait Islander doctors, nurses and other health care workers such as drug and alcohol workers, sex offender counsellors, and psychologists. Women recommended that more steps need to be taken to broaden, encourage and assist studies and training in the health care field. We have already referred to cases where Aboriginal health care workers under a CDEP work program have worked for many years without being given the opportunity or assistance to attain higher skills or qualifications. In some communities, these Aboriginal health care workers are the only people providing basic health care support to the community.

### **Lack of basic health determinants**

It is well recognised that social inequalities have a significant impact on health outcomes.

In some communities Aboriginal and Torres Strait Islander women still don't have access to the basic requirements for healthy living, such as adequate housing, reliable

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<sup>106</sup> Bowden and Fethers, above n 90, 620.

<sup>107</sup> Jennifer M Hunt and Lynore K Geia, 'Can we better meet the healthcare needs of Aboriginal and Torres Strait Islander Women' (2002) 177 *The Medical Journal of Australia* 533, 533.

<sup>108</sup> Bowden and Fethers, above n 90, 620.

supplies of clean water, functioning sewerage and electricity services, and fresh food (see discussion below under Article 13 for further details).

### **Connection between land and health**

As well as the usual recognised social determinants for good health outcomes, connection with our land, culture and spirituality are recognised as significant factors in achieving good health for Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander women from around Australia are concerned that there remains little acknowledgement of the connection between physical and environmental health, and our relationship to the environment. As custodians of the land, our voices are not sufficiently heard or respected, and the impact of environmental destruction on our health is devastating.<sup>109</sup>

We recommend that the CEDAW Committee:

**Recommend that the Australian Government ensure access to primary health care, appropriate housing, adequate sanitation and reliable supplies of clean water, and fresh food.**

**Recommend that the Australian Government allocate additional funds to recruit and train sufficient health care workers for all Aboriginal and Torres Strait Islander women to have access to medical services.**

**Recommend that the Australian Government Australian Women's Health Policy develop strategies to increase the participation of Aboriginal and Torres Strait Islander women in health screening programs.**

**Recommend that the Australian Government collect and make publicly available statistics on Aboriginal and Torres Strait Islander women's health, including disaggregated data showing health status by age, location, disability, income, housing status, and educational attainment.**

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<sup>109</sup> Women's Rights Action Network Australia, above n 70, 20.

## 18. Article 13: Economic and social rights (including housing)

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### Challenges in implementing Article 13

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Everybody needs a home. Adequate housing is a basic prerequisite for improving the health, education and lives of our women.

There are ongoing concerns about the poor standards of living experienced by Aboriginal and Torres Strait Islander people.

#### **Housing**

##### **Home ownership**

Aboriginal and Torres Strait Islander people are still much less likely to own their own home and are much more likely to receive some form of housing assistance, such as Aboriginal and Torres Strait Islander or mainstream community housing or public housing. In 2006, a much lower proportion of Aboriginal and Torres Strait Islander people lived in home owner/purchaser households (28.9 per cent) than non-Indigenous people (72.1 per cent).<sup>110</sup>

##### **Overcrowding**

Overcrowding in houses places severe stress on the residents. A much higher proportion of Aboriginal and Torres Strait Islander people live in overcrowded conditions than other Australians. Many of these houses are overcrowded because of inadequate, inappropriate or poorly maintained housing stock.

The Productivity Commission Report talked about the effects of overcrowding:

Overcrowding can have negative effects on health, family relationships and even children's education. If a house is not appropriately designed for the number of residents, the bathroom, kitchen and laundry facilities may be inadequate, making it more difficult to prevent the spread of infectious diseases. Cramped living conditions can increase domestic tensions and contribute to domestic violence. Overcrowding also affects the ability of children to do homework or study, or even to gain sufficient sleep and relaxation.<sup>111</sup>

##### **Poor housing quality**

Some Aboriginal and Torres Strait Islander people, especially those in remote areas, continue to live in poor quality, substandard housing that endangers their health. For example, there are still some dwellings in Aboriginal and Torres Strait Islander communities not connected to essential services. In 2006 there were 51 dwellings in

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<sup>110</sup> Productivity Commission Report, above n 2, [8.38].

<sup>111</sup> Ibid, [9.2].

communities not connected to an organised sewerage system, 85 not connected to an organised electricity supply and 10 not connected to an organised water supply.<sup>112</sup>

### **More culturally appropriate housing needed**

As well as overcrowding and housing quality, there is not enough culturally appropriate housing for Aboriginal and Torres Strait Islander people. Many European-style dwellings do not adequately accommodate Aboriginal and Torres Strait Islander cultures as our people often host extended families.<sup>113</sup> Significantly, many women reported an absence of consultation and community initiatives to hear what their housing needs are.<sup>114</sup> Housing and infrastructure policies for Aboriginal and Torres Strait Islander people must involve genuine consultation and participation of Aboriginal and Torres Strait Islander people in the development of these policies and the allocation of funding.

For example, Aboriginal women in Alice Springs reported that housing was often poor quality and substandard, and that there was a lack of maintenance and upkeep of the properties. They noted that little had changed in the past four years. The most recent national survey to include measures of housing quality was the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS). According to the survey, around one-third (35%) of Aboriginal and Torres Strait Islander households were living in dwellings that had structural problems (e.g. rising damp, major cracks in floors or walls, major electrical/plumbing problems and roof defects). Just over half (55%) of Aboriginal and Torres Strait Islander households renting mainstream or community housing reported that their dwellings had structural problems, while the corresponding proportions for renters of state/territory housing, private and other renters, and home owners were 42%, 33% and 22% respectively.<sup>115</sup>

### **Aboriginal and Torres Strait Islander women's experiences of public housing**

Aboriginal and Torres Strait Islander women frequently report that it is extremely difficult for them to get adequate and appropriate public housing. As discussed above at Articles 10 and 12, adequate housing is a prerequisite for adequate health and educational outcomes. Women reported feeling great stress at being trapped in unsuitable housing and fear that their children may be taken away from them if they can't find an appropriate place to live. A child protection worker explained the crisis for some women:

Aboriginal and Torres Strait Islander single mothers with children are asked to get suitable housing and due to the lack of housing, long priority housing lists, overcrowding with families, we are asking the impossible. Women's refuges are constantly full and there are no other places for women from remote or rural areas to go for help.

Aboriginal and Torres Strait Islander women have described the following barriers to finding public housing:

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<sup>112</sup> ABS Health and Welfare Report 2008, above n 47, 53. .

<sup>113</sup> Miloon Kothari, Special Rapporteur on the Right to Adequate Housing, *Report of the Special Rapporteur on the Right to Adequate Housing on Mission to Australia*, UN Doc A/HRC/4/18/Add.2 (2007), [95].

<sup>114</sup> Alice Springs consultation. See also *ibid*, [96].

<sup>115</sup> ABS Health and Welfare Report 2008, above n 47, 42.

### Insufficient housing stock

Women experience long periods of time on public housing waiting lists due to insufficient public housing stock. This is particularly chronic for Aboriginal and Torres Strait Islander women in regional, rural and remote regions. In Alice Springs women reported that the waiting lists were between two and three years.

### Inappropriate Tenancy Agreements

Aboriginal and Torres Strait Islander women report problems with inflexible, culturally biased tenancy agreements that limit the number of people that may live in the house. Many of our women need to be able to cater for changing 'concertina' occupational patterns in order to meet family obligations, such as relatives seeking accommodation when attending medical appointments or funerals in a particular town. Currently, many women find themselves 'in breach' of their tenancy agreements when relatives come to stay, and find that their housing is jeopardised when they fulfil their obligations to their families.

### Housing Design

Aboriginal and Torres Strait Islander women report that much public housing is not designed with the climate in mind. For example, many "fibro" and iron, or simply unlined iron 'houses' exist in the hot north of Australia. These houses are uninsulated, don't have air-conditioning, and are simply uninhabitable for a large part of each day. Many houses also lack adequate, if any, security. This is a particular concern for women attempting to escape domestic violence.

### Housing policy

Our women continue to report experiencing discriminatory housing 'allocation' policies, which operate to limit which particular houses and/or areas are allocated to Aboriginal and Torres Strait Islander tenants.

### Inadequate housing

Our women also report that the public houses they are allocated need significant maintenance and repairs. They also report that their requests for such work are either ignored, or dealt with only after long delays and much agitation by the women.

### Previous debt

Women have told us they have been refused public housing because of a previous existing debt to the housing authority that hasn't been paid. Often this debt arises from circumstances of domestic violence, or damage to poorly maintained properties for which the tenant has been made liable. Given their lack of alternative housing options, many Aboriginal and Torres Strait Islander women either remain homeless, or are coerced into repaying debts that they do not owe.

## **Discrimination when seeking housing**

Aboriginal and Torres Strait Islander women report experiencing racial discrimination when trying to get housing. With public housing, discrimination may come from neighbours, individual housing authority staff and through the application of departmental policy.<sup>116</sup> Similarly, women have reported experiencing overt racism when

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<sup>116</sup> An examination of systemic racism in relation to public housing can be found in Equal Opportunity Commission of WA, 'Finding a Place: Report of the Inquiry into the Existence of Discriminatory

applying for private rental accommodation, making it impossible for them to find suitable private rental housing. Our women have also experienced overt discrimination when applying for home loans from private lending institutions. The inability to afford or access mortgage finance, coupled with discrimination in the private rental market and insufficient public housing, puts many of our women in impossible situations.

### Case Study

One woman reported that an Aboriginal teacher in a regional town in New South Wales was trying to find rental accommodation. The real estate agents in town told her that there was nothing available. Very upset, she rang her white Australian husband who went to the real estate offices and was given lists of available houses. This woman did not make a complaint as she had previously been involved in a discrimination issue and just could not face going through the process again.<sup>117</sup>

### New houses under the Northern Territory Intervention

As one forum participant pointed out:

It can't be that hard to get some emergency accommodation set up quickly in Aboriginal communities. The government managed to do it a few months for the Northern Territory Intervention workers.

As of early July 2009, none of the hundreds of new houses promised in 2007 for remote communities as part of the Northern Territory Intervention have been built.<sup>118</sup>

### National Partnership on Remote Indigenous Housing

The Remote Indigenous Housing National Partnership provides for \$1.94 billion over 10 years to reform housing and infrastructure arrangements in remote Aboriginal and Torres Strait Islander communities and is part of the Australian Government's 'Close the Gap' initiative.<sup>119</sup> The partnership aims to improve the living standards of Aboriginal and Torres Strait Islander people living in remote areas by reducing overcrowding, homelessness, poor housing conditions and severe housing shortages.<sup>120</sup>

Whilst the proposed improvements in Aboriginal and Torres Strait Islander housing are welcome, there must be genuine consultation with Aboriginal and Torres Strait Islander people to ensure that housing is culturally appropriate.<sup>121</sup> The housing needs of our women must be heard and listened to.

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Practices in Relation to the Provision of Public Housing and Related Services to Aboriginal People in Western Australia', (Perth: EOC, 2004).

<sup>117</sup> Case study provided by participant attending the Brisbane consultation. Similar experiences were reported in most of the consultations.

<sup>118</sup> Paul Toohey, 'Roadblock on remote housing as progress stalls on indigenous response', *The Australian*, (4 July 2009), <<http://www.theaustralian.news.com.au/story/0,25197,25730613-601,00.html>> at 16 July 2009.

<sup>119</sup> Australian Government, 'Closing the gap on Indigenous disadvantage: The challenge for Australia' (February 2009), 21, <[http://www.fahcsia.gov.au/indigenous/closing\\_the\\_gap/closing\\_the\\_gap.pdf](http://www.fahcsia.gov.au/indigenous/closing_the_gap/closing_the_gap.pdf)>.

<sup>120</sup> Council of Australian Governments, 'National Partnership Agreement on Remote Indigenous Housing' (2008), 1, <[http://www.coag.gov.au/coag\\_meeting\\_outcomes/2008-11-29/docs/20081129\\_remote\\_indigenous\\_housing\\_factsheet.pdf](http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/docs/20081129_remote_indigenous_housing_factsheet.pdf)>.

<sup>121</sup> Australian Human Rights Commission, 'Review of Australia's Fourth Periodic Report on the Implementation of the International Covenant on Economic Social and Cultural Rights', Australian

We recommend that the CEDAW Committee:

**Recommend that the Australian Government ensure that Aboriginal and Torres Strait Islander women are consulted on any housing policies affecting them to ensure culturally appropriate housing policies are developed.**

## Poverty

Our women are at the greatest risk of poverty in Australia. A 2008 report by the Organisation for Economic Development (OECD) found that the risk of poverty for Australian single parents is 70 per cent.<sup>122</sup> Aboriginal and Torres Strait Islander families have a significantly higher rate of being single parent families (38%) compared with the overall proportion of single-parent families in Australia (16%).<sup>123</sup> As most sole parents in Australia are women, Aboriginal and Torres Strait Islander women are therefore at the greatest risk of poverty.

The needs of women and sole parents are not met by the current parenting payments. In April 2009, the maximum amount a sole parent could receive was only \$569.80 per fortnight, while a partnered parent can receive \$409 per fortnight with the benefit of a second income in the family.<sup>124</sup> The Australian Government announced boosts to other key pensions in the 2009-20 Federal Budget, but excluded parenting payments from the rises.<sup>125</sup> This issue is further discussed in the Australian NGO report. The Australian Government must address this disadvantage suffered by women in general and by Aboriginal and Torres Strait Islander women in particular, with regard to their economic and social rights under Article 13.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government provide adequate support for sole parents to alleviate the disadvantage suffered by women generally and in particular Aboriginal and Torres Strait Islander women in the enjoyment of their economic and social rights under Article 13.**

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Human Rights Commission Submission to the United Nations Committee on Economic, Social and Cultural Rights, 17 April 2009, 40.

<sup>122</sup> OECD, 'Country Note: Australia', *Growing Unequal? : Income Distribution and Poverty in OECD Countries* (2008), 2, <<http://www.oecd.org/dataoecd/44/47/41525263.pdf>>.

<sup>123</sup> Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2008 report* (2008), 826.

<sup>124</sup> Centrelink, 'How much parenting payment do I get?' (2009), <[http://www.centrelink.gov.au/internet/internet.nsf/payments/pay\\_how\\_pp.htm](http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_pp.htm)>.

<sup>125</sup> Australian Associated Press, "No apologies from Rudd on pensions", *The Canberra Times*, (13 May 2009).

## 19. Article 14: Rural women

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43 per cent of Aboriginal and Torres Strait Islander people live in regional areas, 25 per cent live in remote areas and 32 per cent live in major cities.<sup>126</sup>

### Challenges in implementing Article 14

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Australia is a vast country, with most cities and large towns concentrated on the coast. Many Aboriginal and Torres Strait Islander women live outside these cities and towns in regional, rural and remote Australia.

Aboriginal and Torres Strait Islander women in rural and remote locations face a large range of challenges, ranging from a lack of access to fundamental services and a lack of culturally appropriate services, to the increased cost of services and basic essential food items.

#### **Utilities - electricity, gas, water, phone and internet**

Pre-payment meters for electricity have been introduced in some regional parts of some Australian states (South Australia, Western Australia and Tasmania). This type of system has a disproportionate impact on low-income, rural and Aboriginal and Torres Strait Islander communities. Our women have raised concerns that prepayment programs for essential services, such as electricity, reduces their equal access to the services. We are also concerned that pre-payment may even make family violence worse as a result of increased financial pressures. Women have also reported that the meters do not always work. There is an urgent need to review the practice of pre-payment electricity metres as some households have reported often long periods without electricity.

Aboriginal and Torres Strait Islander women are commonly the carers for children and vulnerable adults. Women report that in some remote communities they do not have reliable access to clean safe drinking water, and this has a negative impact on their health and their families' health.

Women in regional, rural and remote regions frequently don't have access to reasonably priced telecommunication services. As a developed nation computer use and internet access in the home is now common place in Australia. In 2007-08, 67% of Australian households had internet access at home, with 78% of those having broadband at home.<sup>127</sup> Limited access to telecommunication and internet services as a result of restricted service provision and/or cost, increases the isolation of many of our women, and makes them more vulnerable in cases of violence or medical emergencies.

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<sup>126</sup> Productivity Commission 2009 Fact Sheet: Women, men and children, above n 48, 1.

<sup>127</sup> Australian Bureau of Statistics, *Household Use of Information Technology, Australia, 2007*(Canberra, 2008), Catalogue. No. 8146.0.

## **Violence against women**

Aboriginal and Torres Strait Islander women continue to suffer distressingly high rates of violence (see the discussion below at Articles 15 and 16). Women in rural areas, particularly those out in remote communities, are especially vulnerable. Many communities do not have access to adequate police services or to safe houses.

## **Educational opportunities not available in some communities**

Whether it is due to poor standards of teaching in a particular local school, or the lack of access to post-compulsory secondary education, many Aboriginal and Torres Strait Islander women and children are forced to leave their communities if they want to access educational opportunities. The cost of doing so, and the lack of resources and support for women outside their communities, prevents many women from pursuing education.

## **Access to justice**

The difficulties faced by Aboriginal and Torres Strait Islander women in accessing the justice system are discussed in more detail below at Articles 15 and 16. For Aboriginal and Torres Strait Islander women in rural and remote locations, distance, isolation, the inability to travel, and the lack of locally available services makes it even harder to access the legal system.

Our women often have to travel out of their community to seek legal advice, assistance from police, or to attend court. Many women have limited or no understanding of or experience with the legal system. When they get to a place where they can get assistance, they often face a lack of understanding and respect from the service providers. There are usually no interpreters available to help them tell their story, and there is rarely translated or easily understandable information available to them. They may have nowhere safe to stay, and no support network while away from their communities. If they are escaping a violent situation, they may fear the perpetrator finding them. These circumstances mean that many Aboriginal and Torres Strait Islander women in rural and remote places do not receive justice or equality before the law.

We recommend that the CEDAW Committee:

**Recommend that comprehensive research be conducted to address the gendered impacts of pre-payment meters and the ongoing impact of the privatisation of utility services.**

**Recommend that the Australian Government ensure the provision of additional services to address the high incidence of family and domestic violence suffered by Aboriginal and Torres Strait Islander women in rural, regional and remote areas.**

## 20. Articles 15 and 16: Equality before the law and equality in family relations (including violence against women)

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### CEDAW Committee consideration of these issues in 2006

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In 2006 the CEDAW Committee 2006 recommended that the Australian Government take steps to increase Indigenous women's legal literacy and improve their access to remedies for claims of discrimination. The Committee also urged the Government to examine the reasons for the high rate of incarceration of Indigenous women and take steps to address its root causes.<sup>128</sup>

### Positive developments

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#### Family Violence Prevention Legal Service Units

In our 2005 Australian Indigenous Women's report on CEDAW, we noted that the funding and implementation of Family Violence Prevention Legal Services (**FVPLS**) in certain key locations around Australia was a positive development. FVPLS are community controlled justice, advisory and referral centres for victims of family violence. The Australian Government Report refers to Family Violence Prevention Legal Services at paragraph 13.27.

The FVPLS program has been expanded several times and in 2007 it was increased to 31 FVPLS units. The locations of the units were determined through research by the Crime Research Centre at the University of Western Australia looking at areas of greatest need not currently receiving service from FVPLS units. There are still no FVPLS units in Tasmania or the Australian Capital Territory.

#### National Indigenous Law and Justice Framework

In April 2009, the Standing Committee of Attorneys-General released a draft National Indigenous Law and Justice Framework (**the draft Framework**) for consultation.<sup>129</sup> A similar public consultation process was carried out in late 2007 on the then National Indigenous Law and Justice Strategy and the outcomes of that consultation have been incorporated into the draft Framework.

The draft Framework takes a holistic approach to addressing the underlying causes and ongoing consequences of Aboriginal and Torres Strait Islander peoples' interactions with the Australian justice system, both as victims and offenders. The main goals of the draft Framework are to reduce the over-representation of Aboriginal and Torres Strait

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<sup>128</sup> CEDAW Committee Concluding Comments, above n 5., [31].

<sup>129</sup> Standing Committee of Attorneys-General Working Group on Indigenous Justice, *National Indigenous Law and Justice Framework 2009 – 2015* (2009), <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_DraftNationalIndigenousLawandJusticeFramework](http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_DraftNationalIndigenousLawandJusticeFramework)>

Islander people in the criminal justice system, reduce alcohol and substance abuse, and increase community safety. In December 2008 there was a public nomination process for the National Indigenous Law and Justice Advisory Body. As yet no appointments have been made.

The Australian Government is to be congratulated on the process and should ensure that there is balanced representation of Aboriginal and Torres Strait Islander women appointed to the National Indigenous Law and Justice Advisory Body .

## Challenges in implementing Articles 15 and 16

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### **Huge rise in imprisonment rates for Aboriginal and Torres Strait Islander women**

The Productivity Commission Report <sup>130</sup> detailed a startling new statistic about the imprisonment of Aboriginal and Torres Strait Islander women:

the imprisonment rate increased by 46 per cent for Indigenous women and by 27 per cent for Indigenous men between 2000 and 2008. After adjusting for age differences, Indigenous adults were 13 times as likely as non-Indigenous adults to be imprisoned in 2008, compared to 10 times in 2000.

Our young people are also being locked up at an alarming rate:

The Indigenous juvenile detention rate increased by 27 per cent between 2001 and 2007. Indigenous juveniles were 28 times as likely to be detained than non-Indigenous juveniles as at 30 June 2007.<sup>131</sup>

The early involvement of young people in the criminal justice system puts them at a much higher risk of further involvement as adults.<sup>132</sup>

According to the Productivity Commission:

Aboriginal and Torres Strait Islander women were 22 times more likely and Indigenous men 17 times more likely as non-Indigenous women and men to be in prison.<sup>133</sup>  
Indigenous men were imprisoned at 12 times the rate for Indigenous women.<sup>133</sup>

The Productivity Commission also commented on the specific needs of women prisoners, and the difficulties faced by our women in prison in particular:

Female prisoners comprise a small but growing proportion of the Australian prison population and have some specific needs not shared by most male prisoners, such as those associated with being a carer for young children. Because there are fewer prisons for women, Indigenous females are often detained in centres far from their children and communities and may also face communication difficulties (ABS 2004b). In a study of women prisoners in WA, the WA Department of Justice (2002b) found that 14 per cent of Indigenous women spoke an Aboriginal dialect as their first language.<sup>134</sup>

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<sup>130</sup> Productivity Commission 2009 Overview, above n 1, 7.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid., 27.

<sup>133</sup> Productivity Commission 2009 Fact Sheet: Women, men and children, above n 48, 2.

<sup>134</sup> Productivity Commission 2009 Overview, above n 1, COAG Targets and Headline Indicators, [4.146].

We have also been told that when they are imprisoned, women, and predominantly Aboriginal and Torres Strait Islander women, are much more likely to be 'locked down' in their cells, denying them equal access to education, training, employment and rehabilitation programs and opportunities compared to male prisoners.<sup>135</sup>

This imprisonment rate is occurring in the context of intolerable levels of family violence, over-policing of selected offences, ill health, unemployment and high levels of poverty.<sup>136</sup> There is also a consistent pattern showing that imprisoned Aboriginal and Torres Strait Islander women have been victims of assault and sexual assault at some time.<sup>137</sup> There is an urgent need to address the root causes of the alarming rise in the imprisonment rate of our women.

The majority of Aboriginal and Torres Strait Islander women in prison are survivors of family violence and or sexual assault and many women enter prison with psychiatric/psychological ill health.<sup>138</sup> Consultations revealed a significant need for post-release support and culturally appropriate programs involving self healing and empowerment. For example, during our consultations, we were told that in Townsville Women's Prison:

The vast majority of women are Aboriginal and Torres Strait Islander and many are repeat offenders. There appears to be little support for women when they leave prison. Most seem to go back into the same situation that caused the initial problem.<sup>139</sup>

The Commonwealth Attorney General's Department has acknowledged that little research and policy development has been dedicated to Aboriginal and Torres Strait Islander women in the prison system. Funding for Aboriginal and Torres Strait Islander experts to engage in this work is critical. Culturally appropriate alternatives to prison for our women must be developed. Further, Aboriginal and Torres Strait Islander services dedicated to the support of Aboriginal and Torres Strait Islander women in the criminal justice system and before and after release from prison are required.

## **Aboriginal and Torres Strait Islander women's access to justice**

In our Australian Indigenous Women's Report on CEDAW in 2005, we stated:

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

The landscape has not changed.

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<sup>135</sup> Information provided by consultation participant.

<sup>136</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Ending family violence and abuse in Aboriginal and Torres Strait Islander communities (2006), 12.

<sup>137</sup> Ibid.

<sup>138</sup> Human Rights and Equal Opportunity Commission, 'Chapter 5 Indigenous women and corrections: a landscape of risk' *Social Justice Report 2002* (2002).

<sup>139</sup> Information provided at Townsville consultation by regular visitors to Townsville Women's Prison.

Over 15 years ago Aboriginal and Torres Strait Islander women were recognised as the most legally disadvantaged group in Australia.<sup>140</sup> Despite many improvements, such as the introduction of specific legal services for Aboriginal and Torres Strait Islander women, significant disadvantages still exist. The focus of recommendations of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) was on improving justice outcomes for men, who comprise the overwhelming majority of Aboriginal and Torres Strait Islander detainees, offenders and prisoners. Only a limited amount of research has been conducted regarding the specific circumstances and needs of Aboriginal and Torres Strait Islander women in relation to the criminal justice system. Consequently, the needs of our women are often met through services not specifically designed for them or through mainstream government agencies available to all women.

As well as the extremely high imprisonment rates for Aboriginal and Torres Strait Islander women, our women are also disadvantaged in many other areas of the law where gaps exist and improved responses are required. One example is the overrepresentation of Aboriginal and Torres Strait Islander women as victims/survivors of family violence and sexual assault. Another example is the vast overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems across Australia where family violence is a factor.

Inadequate and narrow policy approaches mean that access to dedicated Aboriginal and Torres Strait Islander legal and associated support is still restricted for our women. For example, Tasmania and the Torres Strait Islands have no Aboriginal and/or Torres Strait Islander women's legal program or service for women escaping family violence.

Concerned about the lack of adequate access to justice for Aboriginal and Torres Strait Islander people, the Human Rights Committee recently called on the Australian Government to ensure equality in access to justice, by providing adequate services to assist Aboriginal and Torres Strait Islander people, including through the provision of adequate funding for Aboriginal and Torres Strait Islander legal aid and interpreter services.<sup>141</sup>

As outlined in the CEDAW Committee's 2006 Concluding Comments, special measures continue to be required.

## **Access to legal services for all Aboriginal and Torres Strait Islander women**

Despite recommendations made by the CEDAW Committee in 2006, funding and policy development for law and justice and associated services for Aboriginal and Torres Strait Islander women across Australia has remained fragmented and inadequate. Indeed, the Australian Government itself has acknowledged 'significant disadvantage' still exists for Aboriginal and Torres Strait Islander women. It is well documented that Aboriginal and Torres Strait Islander women have and continue to experience difficulties in gaining legal representation from Aboriginal Legal Services.<sup>142</sup>

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<sup>140</sup> Australian Law Reform Commission, *Equality before the law: Justice for women*, Report No 69 (1994), 79-83.

<sup>141</sup> *Concluding Comments, Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), [25].

<sup>142</sup> See, Indigenous Women and Access to Legal Services, Access of Indigenous Australians to Law and Justice Services, *Indigenous Law and Justice Inquiry Final Report* (22 June 2005) Chapter 3, cited in Megan Davis, 'How do Aboriginal Women fare in Australian Democracy?' (2007) 6 (28) *Indigenous Law Bulletin*, 9-11.

One of the major issues with providing access to justice is that, where they exist, Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) have a major focus on criminal defence matters. Some Aboriginal and Torres Strait Islander women have reported feeling reluctant to seek advice and support from ATSILS because the legal service may be defending the perpetrators of violence the women are trying to escape.

### **Culturally accessible services**

In order to access legal assistance, some women require the assistance of translators and sign language interpreters. While translating and interpreting services are provided to many women from non-English speaking backgrounds, there are few translating and interpreting services accessible to Aboriginal and Torres Strait Islander women.

### **Lack of awareness of rights and legal obligations**

Our women have reported that they are often unaware of their rights. While very good community legal education programs are provided by community legal centres and other organisations, Aboriginal and Torres Strait Islander women have reported that they continue to be unaware of their rights and options for pursuing legal remedies, particularly in relation to intersectional discrimination. Issues relating to understanding intersectional discrimination come from the fact that the legal system in Australia continues to have inadequate protections against intersectional discrimination (for further detail on the limitations of the anti-discrimination legal framework in Australia see discussion under Article 1 in the Australian NGO Report).

#### **Example**

Aboriginal and Torres Strait Islander women have told us that they feel powerless when confronting demands/requests from government workers. Many of our women are not aware of their rights or how to demand respect for their rights when government workers demand access to their property. In one case, when challenged by a woman, the government worker's response was 'we will have to take your kids away' if you don't comply.

### **Aboriginal and Torres Strait Islander women working in the justice system**

Aboriginal and Torres Strait Islander women report feeling alienated by the justice system because there are not enough Aboriginal and Torres Strait Islander women working in the system. It is essential that Aboriginal and Torres Strait Islander women are recruited into key positions within the law and justice system at both Commonwealth and state levels. In addition, Aboriginal and Torres Strait Islander women have recommended that governments should take all possible steps to support our women to take up roles in the judiciary, magistracy and broader legal system, together with roles as psychologists and counsellors. In some circumstances mentoring arrangements may be required to build Aboriginal and Torres Strait Islander women's capacity and experience. Commitment to additional funding for key positions may also be required to implement mentoring arrangements. In accordance with Article 4, temporary special measures should be taken to ensure Aboriginal and Torres Strait Islander women are employed in key decision making, policy and advisory positions

## Violence against women and children

*Violence against women and girls makes its hideous imprint on every continent, country and culture* — United Nations Secretary-General, Ban Ki-moon.<sup>143</sup>

The level of violence in Aboriginal and Torres Strait Islander communities remains unacceptably high and the victims of family violence are disproportionately women and children. We have known this anecdotally for a long time. There is now considerable supporting evidence that Aboriginal and Torres Strait Islander women are far more likely to be victims of family violence than non-Indigenous women.

The Productivity Commission found that:

Indigenous people are much more likely to be victims of homicide than non-Indigenous people. In 2006-07, 48 per cent of Indigenous homicide victims were female and 52 per cent were male. Indigenous females and males were 35 and 21 times as likely to be hospitalised due to family violence related assaults as non-Indigenous females and males.<sup>144</sup>

Importantly the Productivity Commission pointed out that 'these sources under-estimate the true extent of family and community violence as they only capture reported violence. Not all victims report violence or seek assistance.'<sup>145</sup> The real figures are probably much higher.

Paragraph 14.74 of the Australian Government Report recognises that family violence is 'causing significant destruction to the fabric of Indigenous communities' and discusses figures in the Northern Territory. It is important to point out that family violence is an issue of concern for many Aboriginal and/or Torres Strait Islander communities across Australia - urban, rural and remote.

## Factors relating to violence against our women

Several factors make the issue of violence against Aboriginal and Torres Strait Islander women unique.

The Aboriginal and Torres Strait Islander Social Justice Commissioner highlights that 'Aboriginal and Torres Strait Islander women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender,'<sup>146</sup> which segregates them from the non-Aboriginal and Torres Strait Islander community and makes them less likely to be willing to leave their own community.<sup>147</sup>

There is also a general lack of reporting of family violence in Aboriginal and Torres Strait Islander communities, which makes breaking the norm and coming forward even more of a challenge. However, in the aftermath of the Northern Territory Intervention, the Domestic and Family Violence Service 'Atunya Wiru Minyma Uwankaraku- Good Protection for all Women,' reported a 21% increase in domestic violence reports from

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<sup>143</sup> Unite to End Violence Against Women United Nations Secretary-General Campaign, 'UN Secretary-General Ban Ki-moon Launches Campaign to End Violence against Women' (Press Release, 25 February 2008).

<sup>144</sup> Productivity Commission 2009 Fact Sheet: Women, men and children, above n 48, 2.

<sup>145</sup> Productivity Commission 2009 Overview, above n 1, COAG Targets and Headline Indicators, [4.128].

<sup>146</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007* (2008), 9.

<sup>147</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities* (2006), 6.

July to December 2007 and January to June 2008.<sup>148</sup> The number of clients from remote areas has increased while the number of clients in Alice Springs has decreased. The Centre attributes this change to increased policing in rural areas and the decrease of violence due to the Intervention measures in urban areas.<sup>149</sup>

The Australian Government Report [at 14.76] provides information about increased night patrol services, increased police in remote communities and new and expanded safe houses for families experiencing violence. However, consultations in Alice Springs revealed that women in the communities and organisations working with them have not seen evidence of safe houses on the ground.

### **National Plan to Reduce Violence against Women and Children**

In 2008, the Australian Government established the National Council to Reduce Violence against Women and Children (**National Council**). The purpose of the National Council is to assist with developing and implementing a *National Plan to Reduce Violence Against Women and Children* (**National Plan**). The National Plan aims to reduce domestic violence and sexual assault. On 29 April 2009, the National Council released a major report, *Time for Action*.<sup>150</sup> The Australian Government has agreed to immediately progress 18 of the 20 priority recommendations made by the National Council in *Time for Action*. The Government is to be commended on its efforts in this area and its commitment to promptly action the majority of the priority recommendations made by the National Council in *Time for Action*. For a full discussion of this issue, see the Australian NGO Report.

The Australian Government should implement the remaining recommendations in the National Plan. In implementing the National Plan, the Australian Government should consult with Aboriginal and Torres Strait Islander women and services in rural, remote and metropolitan areas. The Government should also provide better resourcing of, and improved access to, legal and other services for our women.

### **Violence against women and customary law**

Aboriginal customary law does not condone family violence and abuse, and cannot be relied on to excuse such behavior. Perpetrators of violence and abuse do not respect customary law and are not behaving in accordance with it. Aboriginal customary law must be applied consistently with human rights standards. At no stage should customary law override the rights of women and children to be safe and live free from violence.<sup>151</sup>

Nonetheless violence against women in the name of customary law continues to affect Aboriginal and Torres Strait Islander women, especially those living in traditional communities. For example, we received a disturbing report about a young woman who was severely physically assaulted in a remote community because her ex-boyfriend committed suicide after she left him for another man while he was in jail.

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<sup>148</sup> Ngaanyatjarra Pitjantatjara Yankunytjatjara (NPY) Women's Council, 'Submission to the NTER Review board: The Domestic and Family Violence Service 'Atunya Wiru Minyma Uwankaraku'- Good Protection for all Women' (2008),

<[http://www.nterreview.gov.au/subs/nter\\_review\\_report/174\\_NPY\\_Womens\\_Council.htm](http://www.nterreview.gov.au/subs/nter_review_report/174_NPY_Womens_Council.htm)>

<sup>149</sup> Ibid.

<sup>150</sup> Prime Minister, Attorney General and Minister for Women, *Time for Action to Reduce Violence Against Women and Children* (Press release, 29 April 2009).

<sup>151</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, above n 147, 9.

## Underage marriage

The legal minimum age for marriage in Australia is 18 years.<sup>152</sup> However, a person under 18 can marry with the approval of a judge or magistrate. The judge or magistrate needs to be satisfied that the underage person is at least 16 years old, is proposing to marry a person of at least 18 years of age, and 'the circumstances of the case are so exceptional and unusual as to justify the making of the order'.<sup>153</sup>

In some traditional remote Aboriginal and Torres Strait Islander communities it is not uncommon for girls to have arranged marriages when they are 16 or 17 years old. However, it has also been reported that sometimes girls are forced into an arranged marriage when they are under 16.

### Case Study<sup>154</sup>

Most of the girls in this community are married off by the time they are 16 or 17 - a husband from a compatible skin group is chosen for them and off they go. I was informed today that one of my 15-year-old girls was married over the weekend, so I won't see her in class again, and she'll probably be pregnant within a month or two. Trying to educate the girls here is difficult, because the expectation is that, as soon as they go through puberty, they will be paired with a young man and that's the last we will see of them in the classroom. They are too young and inexperienced to be able to stand up for themselves when the men get drunk and start to bash them, so the cycle just continues, from generation to generation, and the children just see that as normal.

Some of my girls come to school and go to sleep - the school is probably the only safe place for them to put their heads down if the men have been drinking. This is supposed to be a dry community, but the sly 'groggers' bring booze into the community and sell it at enormous profits to the drinkers. We have some very damaged kids in our school, that's for sure, but we do the best we can for them and try to encourage them to come.

## Child abuse and child protection

Across Australia, Aboriginal and Torres Strait Islander children were more than 6 times as likely as other children to be the subject of a substantiated notification of child abuse or neglect<sup>155</sup> 41 out of every 1000 Aboriginal and Torres Strait Islander children were on care and protection orders compared to 5 per 1000 non-Indigenous children at 30 June 2008.<sup>156</sup> We do not know how many of these children are girls as gender-disaggregated data is not available.

### Under-reporting of child abuse

Child abuse is chronically under-reported in Aboriginal and Torres Strait Islander communities. Several factors contributing to this are highlighted in the Little Children are Sacred Report, including:

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<sup>152</sup> *Marriage Act 1961* (Cth) s 11.

<sup>153</sup> *Marriage Act 1961* (Cth) s 12.

<sup>154</sup> Case study provided in confidence by a school teacher working in the community.

<sup>155</sup> Australian Institute of Health and Welfare, *Child protection Australia 2007-08* (2009) (Child Protection Australia), 30.

<sup>156</sup> Productivity Commission 2009 Overview, above n 1, 25.

- that victims of child abuse are often ostracised by the community
- a past history of problematic interactions with powerful government authorities including police and child protection authorities (history of stolen generations);
- fear of possible removal of the child from the community (history of children never returning);
- the perpetrator going to jail and implications of this in terms of community repercussions (memories of deaths in custody).<sup>157</sup>

Given these problems it is difficult to accurately estimate the extent of the abuse experienced by Aboriginal and Torres Strait Islander children and develop effective programs.

### **Over-representation of Aboriginal and Torres Strait Islander children in state 'care'**

Aboriginal and Torres Strait Islander children are significantly over-represented in the care and protection systems of all jurisdictions. In 1997 the *Bringing Them Home* inquiry found that the proportion of Aboriginal and Torres Strait Islander children who were removed and placed in care was seven times higher than the proportion of non-Indigenous children.<sup>158</sup>

Unfortunately, since that time the rate has increased rather than decreased. In 2007-08, Aboriginal and Torres Strait Islander children were nine times more likely to be in out-of-home care than non-Aboriginal and Torres Strait Islander children. In all jurisdictions, there were higher rates of Aboriginal and Torres Strait Islander children in out-of-home care than other children.<sup>159</sup> The ongoing removal of Aboriginal and Torres Strait Islander children perpetuates a cycle that spans generations of removing children from their families and communities.

Our women remain gravely concerned at the ongoing failure by governments to engage in real dialogue with Aboriginal and Torres Strait Islander women to formulate practical and positive strategies to protect children at risk. Of the submissions provided to the 'National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families', not one Aboriginal and Torres Strait Islander organisation saw the current statutory interventions by child welfare department to be an effective response to their communities' child protection needs.<sup>160</sup> There is a strong argument that the current mainstream child protection models are not applicable to Aboriginal and Torres Strait Islander cultures.<sup>161</sup>

Our women have reported that there are often not enough appropriate Aboriginal and Torres Strait Islander carers for children who are placed in care. Children are therefore placed elsewhere, removed from their communities and culture, which can be detrimental and damaging to their development and identity. Women have also reported that even where appropriate Aboriginal and Torres Strait Islander carers are found, often not enough support is provided to those carers. Torres Strait Islander women

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<sup>157</sup> Little Children are Sacred Report, above n 19, 177.

<sup>158</sup> Human Rights and Equal Opportunity Commission, above n 7, 372.

<sup>159</sup> Child Protection Australia, above n 155, 63.

<sup>160</sup> <sup>160</sup> Janet Stanley, Adam Tomison, and Julian Pocock, "Child Abuse and Neglect in Indigenous Australian Communities - Issues Paper No 19," (Melbourne: Australian Institute of Family Studies: National Child Protection Clearinghouse, 2003), 23-24.

<sup>161</sup> C Cunneen and T Libesman, A Review of International Models for Indigenous Child Protection, (2002).

raised concerns over the COAG Early Years Childhood Frameworks lack of recognition of traditional child rearing practices within policy implementation.

We recommend that the CEDAW Committee:

**Recommend that the Australian Government increase the availability of translating and deaf interpreting services for Aboriginal and Torres Strait Islander women to increase their access to legal assistance and justice**

**Recommend that the Australian Government include consultations with local Aboriginal and Torres Strait Islander women on identified sexual assault, family and domestic violence initiatives as part of program development, implementation, monitoring and evaluation particularly as programs respond to local concerns in rural and remote locations.**

**Recommend that the Australian Government seek the advice of Aboriginal and Torres Strait Islander women to review the statutory child protection mechanisms as they affect Aboriginal and Torres Strait Islander children, to halt the damage being done by the existing regime.**

**Recommend that the Australian Government undertake concerted and rigorous efforts under the Commonwealth Community Legal Services Programme, to fund and monitor programs to assist Aboriginal and Torres Strait Islander women in accessing legal services, and providing input into the system of the administration of justice.**