



Australian
Human Rights
Commission

Independent Interim Report on CEDAW

**AUSTRALIAN HUMAN RIGHTS COMMISSION REPORT TO THE COMMITTEE ON
THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

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ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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1 Introduction

1. The Australian Human Rights Commission welcomes the opportunity to submit this Independent Interim Report on Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to the Committee on the Elimination of Discrimination against Women (the Committee).
2. In July 2010 the Committee requested that the Australian Government provide, within two years, written information on the steps undertaken to implement the recommendations contained in paragraphs 29 and 41 of its Concluding Observations.¹

Para 29: The Committee encourages the State party to continue its efforts to tackle the persistent problem of violence against women and urges the State party to adopt national legislation and adopt, implement and adequately fund as a matter of urgency the National Action Plan to Reduce Violence against Women and Their Children, including a mechanism for independent monitoring. The Committee further recommends that the State party develop strategies to prevent homelessness resulting from domestic violence and ensure that women who are victims of domestic and family violence and their children are provided with appropriate ongoing accommodation and integrated support. The Committee recommends that the State party take appropriate measures, including specific legislative measures criminalizing acts of domestic violence, prosecute acts of domestic violence and punish the perpetrators of such acts. The Committee requests the State party to include under the Committee's follow-up procedure referred to in paragraph 50 of the present concluding observations available information on the number and nature of reported cases of domestic violence, on the conviction and the sanctions imposed on perpetrators, as well as any assistance and rehabilitation measures provided to victims of domestic violence.

Para 41: The Committee reiterates its previous recommendation that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It urges the State party to implement specific strategies within the national plan to address violence against Aboriginal and Torres Straits Islander women, including funding culturally appropriate indigenous women's legal services in urban, rural and remote areas of Australia. It recommends that the State party pay particular attention to ensuring access to quality education, including post-graduate education, vocational training, adequate health and social services, legal literacy and access to justice.

3. This Independent Report updates the Committee on the implementation of recommendations in paragraph 29 on measures to address violence against women and paragraph 41 on measures to improve Aboriginal and Torres Strait Islander women's enjoyment of their human rights.

2 Recommendations

4. ***The Australian Human Rights Commission recommends that:***

In relation to the *National Plan to Reduce Violence Against Women and Their Children 2010-2022* (National Plan), the Australian Government:

- in conjunction with each state and territory, share their progress on development of the first three-yearly National Plan Implementation Plan (Implementation Plan), and jurisdictional Implementation Plans;
- ensure that adequate and sustainable Commonwealth funding is in place to support coordinated and strategic implementation of the National Plan across jurisdictions and sectors,
- undertake an inclusive implementation of the National Plan that, in consultation with the sectors and communities, accommodates women's needs and includes specific programs and services for Aboriginal and Torres Strait Islander women, women with disability, migrant and refugee women, women of diverse sex, sexuality and/or gender, and older women;
- ensure under the Implementation Plan both prevention programs and critical response services are implemented and funded;
- publish disaggregated data that includes information on the number and nature of reported cases of domestic violence, action taken against perpetrators, and assistance provided to women experiencing violence;
- share progress on the development of the Centre for Excellence and the development of a national data collection and reporting framework, including funding committed to these initiatives;
- establish and fund an independent monitoring and evaluation mechanism for the National Plan.

In relation to domestic and family violence, the Australian Government:

- amend the *Fair Work Act 2009* (Cth) (Fair Work Act) National Employment Standards (NES) to **provide for paid domestic and family violence leave**;
- extend section 65 of the Fair Work Act to provide a right to request flexible working arrangements to employees affected by domestic or family violence;
- include prohibition of discrimination on the ground of domestic and family violence in the consolidated Commonwealth equality law;
- act with due diligence in preventing and responding to acts of violence against women including: protecting women and children from violence; providing safe accommodation; and investigating and punishing acts of gender-based violence;
- increase access to culturally specific services, including specialist legal services, for Aboriginal and Torres Strait Islander women who experience domestic or family violence.

In relation to violence against women with disability, that the Australian Government:

- implement the Committee's recommendation to undertake a comprehensive assessment of the situation of women with disability, including their experiences of violence including in institutions and supported accommodation;²
- implement the National Plan in a way that is inclusive of the broader range of relationships and recognises the various forms of violence that women with disability experience, including their experiences of violence in institutional settings;
- prohibit the non-therapeutic sterilisation of women and girls with disability, and ensure that mechanisms are in place to provide adequate protection from such sterilisations;

In relation to Aboriginal and Torres Strait Islander women's human rights, that the Australian Government:

- commit to ongoing funding arrangements to ensure the sustainability of the National Congress of Australia's First Peoples (National Congress) and continued funding for Aboriginal and Torres Strait Islander women's leadership programs;
- ensure that consultation and engagement with Aboriginal and Torres Strait Islander women takes place in relation to all measures and decisions that affect Aboriginal and Torres Strait Islander women.

3 Violence against women

5. Since the Committee's Concluding Observations in 2010, the Australian Government has taken significant positive steps to reduce violence against women. The most significant of these steps are the launch of the *National Plan to Reduce Violence Against Women and Their Children 2010-2022* and the *Australian National Action Plan on Women, Peace and Security 2012-2018* (Action Plan on Women, Peace and Security).³
6. The key issues discussed in this section include:
 - The National Plan
 - Domestic and family violence
 - Sexual harassment
 - Violence against Aboriginal and Torres Strait islander women
 - Violence against women with disabilities
 - UN Special Rapporteur on violence against women's study tour, April 2012

3.1 National Plan

7. In March 2011, Australia adopted the National Plan as its primary policy on sexual assault and domestic and family violence.⁴ The National Plan aims to: reduce violence against women and their children; improve how government works together to reduce such violence; increase support for women and children; and create innovative and targeted ways to bring about change.
 8. The National Plan identifies six national outcomes for all governments to deliver during the life of the Plan: (1) communities are safe and free from violence; (2) relationships are respectful; (3) Indigenous communities are strengthened; (4) services meet the needs of women and children experiencing violence; (5) justice responses are effective; and (6) perpetrators stop their violence and are held to account.
 9. The implementation of the Government's National Plan is based on a series of four three-yearly implementation plans, constituting a federal implementation plan and state and territory government implementation plans.⁵
 10. A National Plan Implementation Panel, consisting of government and NGO representatives, was established in 2011 to advise Ministers on the development and implementation of the National Plan.
 11. The National Plan states that its implementation will be measured against high level performance indicators as well as indicators for each of the national outcomes identified above. It also contains a commitment to establish a National Centre of Excellence to 'bring together existing research, as well as undertake new research under an agreed national research agenda'. The National Plan commits to all federal and state/territory jurisdictions developing a national data collection and monitoring framework.
- (a) *Positive developments*
12. Under the National Plan, the Australian Government has introduced several new initiatives (since 2009), including:
 - 'The Line', a \$17 million social marketing campaign launched by the Government in June 2010, aimed at encouraging young people to develop healthy, respectful relationships;
 - over \$9 million for Respectful Relationships education projects;
 - \$12.5 million for a the new 1800 RESPECT: National Sexual Assault, Family & Domestic Violence Counselling Line;
 - \$8.8 million for telephone support for frontline workers;
 - \$0.75 million for counselling services for male victims of violence through Mensline;
 - \$3.75 million for a community grants program to support local community action to prevent violence against women;
 - \$4.8 million for Reform Projects to improve services for victims of domestic violence;

- \$3 million for research into perpetrator interventions;
 - \$4.6 million for a reward/incentive payment to States and Territories for promoting best practice perpetrator interventions;
 - \$6.9 million for the establishment of a National Centre of Excellence;
 - \$14.5 million to undertake the next editions of the Personal Safety Survey and the National Community Attitudes Survey; and
 - evaluation of the impact of ‘victim-focused’ court practices reforms;
 - the development of a media code of practice on the reporting of sexual assault and domestic violence.⁶
13. In addition, the Standing Council on Law and Justice is developing a national domestic and family violence order (DVO) scheme, with support from the Standing Council on Police and Emergency Management. The scheme involves:
- states and territories introducing model provisions that provide automatic recognition across jurisdictional borders of court issued DVOs; and
 - the establishment and funding of a national DVO information-sharing capability using CrimTrac's National Police Reference System.⁷

The scheme is due to commence in early 2013, subject to states and territories introducing relevant legislation.⁸

14. In November 2011 the Commonwealth Parliament passed the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* to respond more effectively to domestic and family violence and child abuse. It prioritises the safety of children, expands the definition of ‘family violence’ to include socially and financially controlling behaviour and exposing a child to family violence, and makes it easier for victims and survivors to report family violence.
15. In June 2012, the Government announced changes to Australia’s migration laws to help those experiencing domestic or family violence on provisional partner visas. Implementation of these changes is scheduled for November 2012.⁹
16. Also commendably, the Government welcomed and financially supported the UN Special Rapporteur on violence against women to undertake a study tour in Australia in April 2012.

(b) *Current challenges*

(i) *Implementation and funding*

17. There have been some limitations with the implementation of the National Plan. Specifically:
- The first three-yearly national Implementation Plan was due to be developed by July 2011. It has not yet been presented and not all state/territory jurisdictional Implementation Plans have been developed.

- The Government has not yet established the Centre for Excellence, nor has it shared the outcomes of the consultation process undertaken to establish the Centre for Excellence.
 - In July 2012, the Ministers at the second Council of Australian Governments (COAG) Select Council on Women’s Issues committed to developing a National Data Collection and Reporting Framework on domestic violence and sexual assault.¹⁰ The national data collection and reporting framework has yet to be developed.
18. If the National Plan is to achieve its six national outcomes and build on progress made in each three year implementation plan, it is critical that implementation is coordinated, adequately supported and resourced. This includes coordination across jurisdictions and sectors, sufficient and dedicated funding, including for the Centre for Excellence; and development of a national data collection and reporting framework. The Commission notes the NGO Follow-Up Report to the CEDAW Committee also comments on these issues.¹¹
19. The National Plan recognises that governments, NGOs and communities need to work together to prevent and reduce violence against women and their children. The Commission considers that implementation of the National Plan must include appropriate consultation with the NGO sector and communities to ensure that initiatives meet the needs of all women experiencing domestic and family violence.
20. In particular, consultation with Aboriginal and Torres Strait Islander women, women with disability, migrant and refugee women, women of diverse sex, sexuality and/or gender, and older women is essential to develop and programs and policies that are culturally appropriate and meet the specific needs for these women.¹² UN Women has noted that good practice for national action plans on violence against women should provide for direct, ongoing and meaningful participation of civil society and other stakeholders throughout implementation.¹³
21. In order to effectively meet the requirements of the violence against women sector in Australia, the Centre of Excellence should be established in line with the principles adopted by the National Plan. It should be an independent entity that doesn’t duplicate the work being done by existing organisations and should be adequately funded.
22. ***The Commission recommends that the Australian Government:***
- in conjunction with each state and territory government, share their progress on the development of the first three-yearly National Plan Implementation Plan (Implementation Plan), and jurisdictional Implementation Plans;
 - ensure that adequate and sustainable Commonwealth funding is in place to support coordinated and strategic implementation of the National Plan across jurisdictions and sectors,
 - undertake an inclusive implementation of the National Plan that, in consultation with the sectors and communities, accommodates women’s needs and includes specific programs and services for Aboriginal and Torres

Strait Islander women, women with disability, migrant and refugee women, women of diverse sex, sexuality and/or gender, and older women;

- ensure under the Implementation Plan both prevention programs and critical response services are implemented and funded;
- publish disaggregated data that includes information on the number and nature of reported cases of domestic violence, action taken against perpetrators, and assistance provided to women experiencing violence;
- share progress on the development of the Centre for Excellence and the development of a national data collection and reporting framework, including funding committed to these initiatives;

(ii) *Monitoring and evaluation*

23. The Commission is concerned that the National Plan makes no provision for the independent monitoring or evaluation of the implementation of the National Plan or for any funding for this purpose.
24. Regular, independent monitoring and evaluation of implementation, progress, and areas for improvement is critical if the National Plan is to achieve long term change. Monitoring should contribute to the development of a national research and education agenda, and promote best practices across sectors and jurisdictions.
25. Independent monitoring and evaluation is a cornerstone of human rights based policy-making and democratic principles.¹⁴ UN Women has noted that National Action Plans on violence against women should provide for a multi-sectoral mechanism to monitor implementation of the plan.¹⁵
26. The independence of such a mechanism clearly strengthens perceptions of the validity of results, and can support implementing States' claims to accountability, evidence-based practice and continuous improvement.¹⁶
27. ***The Commission recommends that:***
- the Australian Government establish and fund an independent monitoring and evaluation mechanism for the National Plan.

3.2 *Domestic and family violence*

28. This Independent Report focuses on domestic and family violence in the context of the workplace and domestic and family violence as a ground of discrimination.
- (a) *As a workplace issue*
29. Domestic and family violence have a real and costly impact on the Australian economy and Australian business. Almost two-thirds of women affected by domestic and family violence in Australia are in some form of paid employment.¹⁷ It is estimated that violence against women and children will cost the Australian

economy \$15.6 billion by 2021-2022, unless effective action is taken to prevent this violence.¹⁸

30. Research on the workplace implications of domestic and family violence demonstrates the extent to which violence impacts on the working lives of both victims and survivors.¹⁹ For example, nearly half (48%) of respondents to the 2011 *National Domestic Violence and the Workplace Survey*, who reported experiencing domestic or family violence, said the violence had affected their ability to get to work.²⁰ Of respondents who experienced violence, 19% said that the violence had continued in the workplace, including abusive phone calls and emails, or the perpetrator attending the workplace.²¹
31. The National Plan requires the Australian Government to develop 'workplace measures to support women experiencing and escaping from domestic violence'.²² Since July 2010, the Australian Government has funded the Safe at Home, Safe at Work Project, which is aimed at addressing the impact of domestic and family violence in the workplace.²³
32. Some progress has been made in the employment sphere in supporting victims and survivors through the introduction, by some, (mainly public sector) employers, of conditions such as paid leave or flexibility measures.²⁴
33. The Australian Law Reform Commission (ALRC) Inquiry - *Family Violence and Commonwealth Laws* considered the impact of Commonwealth employment laws on victims and survivors of domestic and family violence. The ALRC acknowledged the role of paid employment as an important protection for victims of domestic and family violence. Its final report recommended that the Australian Government consider:
 - amending the NES with a view to including additional, paid, domestic or family violence leave;²⁵ and
 - extending the existing right to request flexible working arrangements to employees who are victims and survivors of domestic and family violence and to employees who provide care or support to victims and survivors.²⁶
34. The Commission notes that there should also be an exception to the ordinary minimum service requirement of 12 months in order to assist female victims and survivors of domestic or family violence, who are more likely to have disrupted employment, and more likely to be employed as casuals and therefore less likely to be able to fulfil the service requirement.²⁷ Currently, employers have 21 days to respond to employee requests for flexibility. To reflect the lack of foreseeability and potential urgency where an employee is experiencing domestic or family violence, a shorter employer response time is necessary.
35. ***The Commission recommends:***
 - that the NES be amended to provide for paid, domestic and family violence leave;

- that section 65 of the Fair Work Act be extended to provide a right to request flexible working arrangements to employees affected by domestic or family violence.

(b) *As a ground of discrimination*

36. One repercussion of domestic and family violence in Australia is discrimination. Victims and survivors may be discriminated against because they either have been, or are currently, in a violent domestic or family situation. Discrimination against victims and survivors occurs in all areas of public life. The majority of research undertaken concerns the workplace, but there is also evidence women who are victims or survivors of domestic or family violence experience discrimination in seeking housing, among other areas.²⁸
37. Research suggests that it is not unusual for victims and survivors to be denied leave or flexible work arrangements to attend to violence-related matters, have their employment terminated for violence-related reasons, and be transferred or demoted for reasons related to violence.²⁹
38. Due to fear of discriminatory treatment, victims and survivors may not disclose their violent situations to their workplace, even where their performance or safety is affected.³⁰ Less than half (48%) of respondents to the *National Domestic Violence and the Workplace Survey* disclosed their violent situation to a manager or supervisor.³³ In cases of non-disclosure, the implications of domestic or family violence remain largely hidden and may contribute to discriminatory treatment due to the employer's lack of understanding about the causes of an apparent decline in an employee's attendance or performance.
39. The Commission notes that the Committee has already recognised, in General Recommendations No. 19 and No. 28, that gender-based violence against women is discrimination on the basis of sex and gender under article 1 of CEDAW. This form of discrimination seriously inhibits women's ability to enjoy and exercise their human rights and fundamental freedoms.³¹ Discrimination against victims and survivors on the ground of domestic violence is not currently prohibited under Australian discrimination law.
40. The ALRC *Family Violence and Commonwealth Laws Inquiry* recommended that 'the Australian Human Rights Commission, in the context of the consolidation of Commonwealth anti-discrimination laws, should examine the possible basis upon which status as an actual or perceived victim of family violence could be included as a protected attribute under Commonwealth anti-discrimination law'.³²
41. The Commission, along with women's rights NGOs and the domestic and family violence sector have advocated for the introduction of a new ground of discrimination concerning domestic and family violence, within the consolidation of Commonwealth anti-discrimination laws.³³ The coverage of the ground of domestic and family violence should extend to: all areas of public life; to direct and indirect discrimination; to actual and imputed status as a victim or survivor of domestic and family violence; to associates of victims and survivors of domestic and family violence; and to discrimination based on past and current experiences of domestic and family violence.

42. The introduction of a legal prohibition would help to counter the individual and systemic implications of discrimination in education, housing, employment and other areas.³² Further, it would:
- offer victims and survivors a choice to disclose their violent situations to employers without fear of repercussion, thereby enhancing safety;
 - reduce the detrimental impact of domestic and family violence on victims' and survivors' labour market participation and the economic security it brings;
 - foster the adoption of workplace policies and procedures to support victims and survivors; and
 - contribute to achieving workplace equality and wellbeing and, accordingly, enhance workplace productivity.³⁴
43. **The Commission recommends** that the consolidated Commonwealth equality law prohibit discrimination on the ground of domestic and family violence.

3.3 Sexual harassment

(a) *In Australian workplaces*

44. In 2003 and again in 2008, the Commission conducted national telephone surveys on the prevalence, nature and reporting of sexual harassment in Australian workplaces.
45. Despite some improvement since the 2003 survey, the 2008 survey found that sexual harassment continued to be a significant issue of concern in Australian workplaces. The 2008 survey found that 22% of women and 5% of men aged 18-64 years have experienced sexual harassment in the workplace in their lifetime.³⁵ In addition, the survey found that the majority of sexual harassment involved a male harasser and a female target (62%).³⁶
46. The Commission is currently undertaking its third national sexual harassment survey. The results of the survey will be published in the second half of the year.
47. In July 2012 the Commission launched a research report entitled *Encourage. Support. Act! Bystander Approaches to Sexual Harassment in the Workplace* in July 2012.³⁷ Bystanders include people who witness sexual harassment firsthand, or are subsequently informed of it taking place. The report affirms the need to include bystander strategies in workplace measures directed at addressing sexual harassment. Bystander strategies are an important means of preventing sexual harassment from occurring in the first place, designing effective procedures to respond to the problem once it has occurred, and dealing with the longer term impacts on those affected.³⁸

(b) *In the Australian Defence Force*

48. In April 2011, the Minister for Defence appointed Australia's Sex Discrimination Commissioner to conduct an independent Review into the Treatment of Women

in the Australian Defence Force Academy (ADFA) (Phase 1) and the broader Australian Defence Force (ADF) (Phase 2). The review was prompted by an incident at ADFA, which involved a female cadet allegedly being filmed without her knowledge on Skype having sex with another cadet, while other cadets allegedly watched in a nearby room.

49. The report into the ADFA was tabled in Parliament in late 2011.³⁹ The report found that the culture of ADFA has evolved significantly since a 1998 review,⁴⁰ which found high levels of inappropriate sexual behaviour and a high tolerance of that behaviour amongst cadets and military staff. However, it also found widespread low level sexual harassment (e.g. repeated telling of sexually explicit stories), inadequate levels of supervision of cadets after hours, cumbersome complaints processes, and unstable and inconsistent leadership occasioned by high staff turnover.⁴¹ The report concluded that ADFA needs to move from an attitude of 'managing and accommodating' women to an attitude of full inclusion of women.
50. The review on the treatment of women across the broader ADF was completed in August 2012. As part of the review, 1000 ADF personnel participated in a sexual harassment prevalence survey conducted among the ADF workplace (comparable with the 2012 national sexual harassment prevalence survey discussed above).
51. The data from the ADF sexual harassment survey found that in the last five years 25.9% of women and 10.5% of men in the ADF have experienced sexual harassment in an ADF workplace. This is comparable with prevalence rates of sexual harassment among men and women in other Australian workplaces. The survey results also found that in the ADF women and men had experienced a *behaviour* that constitutes sexual harassment but had not identified it as such, indicating a lack of awareness about appropriate workforce behaviours. The results showed that while the large majority of sexual harassment goes unreported by targets, bystanders are more likely to take some form of action.⁴²

3.4 Violence against Aboriginal and Torres Strait Islander women

52. Aboriginal and Torres Strait Islander women are 45 times more likely than non-Indigenous women to be victims of domestic violence⁴³ and 35 times more likely to be hospitalised due to family violence-related assaults than non-Indigenous females and males.⁴⁴ The homicide rates for Aboriginal and Torres Strait Islander women are between 9 and 23 times higher at different times in the life cycle than they are for non-Indigenous women.⁴⁵
 - (a) *Coronial inquest into domestic violence-related homicide*
53. Despite the high rate of homicides and evidence of systemic failures (in relation to adequate policing, crisis care and accommodation, and response and support services to protect Aboriginal and Torres Strait Islander women at risk), very few, if any inquests into domestic violence related homicides of Aboriginal women are held.⁴⁶

54. An exception was the Western Australian coronial inquest into the death of an Aboriginal woman, Andrea Pickett, in 2012,⁴⁷ which found that Government agencies failed to protect Andrea effectively against violence at the hands of her ex-partner, despite her repeated requests for help over a sustained period to the police, refuges and other agencies.⁴⁸ Specifically, the Coroner found that Government agencies:
- failed to adequately respond to the repeated threats to kill Andrea by not putting a plan in place for her protection;⁴⁹
 - failed to provide Andrea and her children with safe accommodation;⁵⁰ and
 - did not adequately classify the perpetrator as a risk to Andrea in granting his parole, determining his parole conditions and in monitoring him whilst he was on parole.⁵¹
55. **The Commission recommends** that the Australian Government act with due diligence in preventing and responding to acts of violence against women including: protecting women and children from violence; providing safe accommodation; and investigating and punishing acts of gender-based violence.
- (b) *Access to culturally appropriate services*
56. The Commission is concerned that there are insufficient culturally appropriate, specific services for Aboriginal and Torres Strait Islander women who experience violence. This was also an issue raised in the UN Special Rapporteur on violence against women's study tour.
57. Domestic and family violence services for Aboriginal and Torres Strait Islander women should be provided by properly trained Aboriginal and Torres Strait Islander staff, optimally women. In addition, there is a need for more Aboriginal and Torres Strait Islander identified positions in generalist domestic and family violence services to assist with language and other issues.
58. There is also currently a lack of culturally appropriate legal services for Aboriginal and Torres Strait Islander women who experience violence, undermining access to justice.⁵² For example, where a perpetrator is represented by the Aboriginal Legal Service, the service may not be available to the victim due to a possible 'conflict'. Aboriginal Family Violence Prevention and Legal Services predominantly assist women living in rural and remote locations, leaving women living in urban areas without the same access to culturally sensitive legal services for domestic and family violence and sexual assault.
59. **The Commission recommends** that the Australian Government increase access to culturally specific services, including specialist legal services, for Aboriginal and Torres Strait Islander women who experience domestic or family violence.

3.5 Violence against women and girls with disability

60. Women with disability experience violence at significantly higher rates, more frequently, for longer, in more ways and by more perpetrators compared to women and girls without disability.⁵³ However, there is inadequate research and no national data on the prevalence and nature of such violence.⁵⁴
 61. Women and girls with disability who experience violence also face significant barriers in accessing critical domestic, family, sexual and community support services that are inclusive and responsive to their needs.⁵⁵
 62. The Australian Government has developed a *National Disability Strategy 2010-2020* that identifies a key policy area as people with disability being safe from violence, exploitation and neglect. However, there are no specific actions to prevent and reduce violence against women and girls with disability.⁵⁶ The current draft National Disability Insurance Scheme also contains no specific measures addressed at violence against women and girls with disability.
 63. The National Plan does not specifically address some forms of violence experienced by women and girls with disability, for example forced sterilisation and abortion, and exploitation, neglect or violence in institutional settings.
 64. The CEDAW Committee in its concluding comments on Australia in 2010, called on State Parties to undertake a 'comprehensive assessment of the situation of women with disabilities in Australia'. To date, this assessment has not been undertaken.
- (a) *Institutional settings*
65. Research suggests high rates of violence, abuse and neglect of women and girls with disability in institutional settings.⁵⁷ Such violence is experienced more often than men with disability in institutions.⁵⁸ In these circumstances, women with disability may experience violence for longer periods of time due to inadequate pathways to safety, and may be afraid to report incidents for fear of reprisal or a lack of confidence in authorities and the justice system.⁵⁹
 66. The CEDAW Committee has urged the Australian Government to 'address, as a matter of priority, the abuse and violence experienced by women with disabilities living in institutions or supported accommodation'.⁶⁰
 67. The Commission notes that issues concerning violence against women with disability in institutional settings were raised during the UN Special Rapporteur on violence against women's study tour. The issues include the heightened vulnerability of women with disability living in group homes, the perceived impunity surrounding violence by staff or other residents, the inability to report violence, and the need for appropriate accessible services and support.⁶¹
 68. ***The Commission recommends that the Australian Government:***
 - implement the Committee's recommendation to undertake a comprehensive assessment of the situation of women with disability, including their

experiences of violence including in institutions and supported accommodation;⁶²

- implement the National Plan in a way that is inclusive of the broader range of relationships and recognises the various forms of violence that women with disability experience, including their experiences of violence in institutional settings.

(b) *Sterilisation*

69. The Commission is concerned that mechanisms are not working adequately to protect women and girls with disability from forced non-therapeutic sterilisations, and unlawful sterilisations continue to occur in Australia.⁶³ This is despite the requirement that the Family Court of Australia or a state and territory guardianship tribunal authorise the performance of such sterilisations.⁶⁴
70. The exact number of non-therapeutic sterilisations performed in Australia on women and girls with disability is unknown, however the Commission is concerned at anecdotal evidence that it may be increasing.⁶⁵
71. Concerns about non-therapeutic sterilisation of women and girls with disability were highlighted during Australia's first Universal Periodic Review by the UN Human Rights Council.⁶⁶ The Committee on the Rights of the Child and the CEDAW Committee have also expressed similar concerns and have urged the Government to enact national legislation prohibiting the practice, except where there is a serious threat to life or health.⁶⁷ To date, the Government has not enacted such national legislation.
72. ***The Commission recommends*** that the Australian Government prohibit the non-therapeutic sterilisation of women and girls with disability, and ensures that mechanisms are in place to provide adequate protection from such sterilisations.

3.6 UN Special Rapporteur on violence against women study tour

73. The UN Special Rapporteur on violence against women, Ms Rashida Manjoo, undertook a study tour in Australia from 10-20 April 2012.⁶⁸ The study tour was co-hosted by the Australian Human Rights Commission and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).
74. The tour encompassed meetings with the Attorney-General, federal, state and territory government representatives, service providers, business representatives, academics and community representatives, including representatives from Aboriginal and Torres Strait Islander communities from both urban and rural areas, culturally and linguistically diverse communities, women with disability, lesbian and trans-women, young women, and older women. In total, 27 roundtables, meetings and site visits were held across four States and Territories.
75. Key themes and issues that emerged during discussions as part of the study tour included:

(a) *Violence against women is a human rights issue*

- It was frequently noted that discrimination against women is a cause and consequence of violence against women.
- The National Plan recognises the right to live safe and free from violence and this should also inform the implementation of the National Plan.
- Where governments fail to address the issue in human rights terms it can lead to an inappropriate response by government and state agencies with long-term social and economic consequences.

(b) *Risks of ‘mainstreaming’*

- ‘Mainstreaming’ programs in relation to violence against women results in a formal rather than substantive equality approach to program design and content.
- Integrating the specific needs of women with disability women from Aboriginal and Torres Strait Islander or migrant and refugee communities into plans, programs and services is essential to effective outcomes.

(c) *Funding, monitoring and evaluation*

- The disconnect between government plans, programs and projects aimed at preventing, addressing and reducing violence against women and the needs of women ‘on the ground’ is a manifestation of inadequate meaningful and effective consultation with women, particularly in the implementation of the National Plan.
- This disconnect is also due to the lack of dedicated, sustainable resources and funding models for both preventative and response based services.
- There is also a lack of regular monitoring and evaluation of programs, in particular the lack of independent monitoring and evaluation of the National Plan, which is exacerbated by the lack of disaggregated data and analysis.

76. See Annex A for the Commission’s full report on the study tour.

4 Aboriginal and Torres Strait Islander women’s rights

77. The key issues discussed in this section are:

- Leadership
- Stronger Futures
- Consultation and engagement

4.1 **Leadership**

78. There have been some positive developments in the area of Aboriginal and Torres Strait Islander women's leadership:

(a) *National Congress*

79. The National Congress, Australia's national Aboriginal and Torres Strait Islander peoples' representative body was established as a company in April 2010.⁶⁹ Half of all Board members are women,⁷⁰ and members are assessed by the Ethics Council and Board according to selection criteria that include gender equity and adequate representation of the membership.⁷¹

(b) *National Aboriginal and Torres Strait Islander Women's Alliance*

80. The Australian Government funded NATSIWA in 2010 as one of six national women's Alliances. NATSIWA strengthens Aboriginal and Torres Strait Islander women's participation and input into domestic policy and advocacy processes by providing a platform for Aboriginal and Torres Strait Islander women to raise issues and concerns facing their communities. It works with other Alliances to build capacity and address women's issues.

81. **The Commission recommends** that the Australian Government commit to ongoing funding arrangements to ensure the sustainability of the National Congress and continued funding for Aboriginal and Torres Strait Islander women's leadership programs.

4.2 **Stronger Futures**

82. Following the five year operation of the *Northern Territory National Emergency Response Act 2007* (Cth) (NTER), known as the 'NT intervention' or the 'Emergency Response', the Government introduced the Stronger Futures legislation in November 2011.⁷²

83. Stronger Futures commenced in July 2012 and will operate for ten years.⁷³ Significantly, it amends the operation of the NTER income management scheme by allowing recognised state/territory authorities (those with 'functions, powers or duties in relation to the care, protection, welfare or safety of adults, children or families') to refer people to income management.

84. The Commission has advocated for the protection and promotion of the rights of Aboriginal and Torres Strait Islander women in its submissions concerning the NTER and Stronger Futures laws. In particular, the Commission is concerned that the income management elements of the legislation may have the unintended consequence of having a disproportionately negative impact on women. This may arise in the context of women still predominantly fulfilling the role of carer in many Australian families.⁷⁴

85. While the Commission welcomes the Australian Government's intent to address and improve the critical situation facing Aboriginal peoples in the Northern Territory, it is concerned that the measures contained within the Stronger Futures

legislation are intrusive and limiting of individual freedoms and human rights. It is the Commission's view that where it is deemed appropriate to design interventions which infringe on individuals' human rights, then that intervention must be the least restrictive on the rights of individuals.

4.3 Consultation and engagement

86. The Commission notes that the *Declaration on the Rights of Indigenous Peoples* (Declaration) requires that states ensure the participation of indigenous peoples in decision making, including the duty to consult with indigenous peoples on matters affecting their interests and rights; the duty to obtain free, prior and informed consent; and the duty to ensure that measures affecting indigenous peoples are taken 'in conjunction with' indigenous people.⁷⁵
87. Specifically, Article 22 of the Declaration requires particular attention be paid to the rights and special needs of indigenous women (as well as elders, youth, children and persons with disability), and requires that states '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'.⁷⁶
88. Advice No. 2 provides a recommended international standard of engagement for States entering negotiations with indigenous peoples. It provides that the duty to consult applies whenever a measure or decision specifically affecting indigenous peoples is being considered or where a decision would disproportionately impact on indigenous peoples.⁷⁷
89. ***The Commission recommends*** that the Australian Government ensure that consultation and engagement with Aboriginal and Torres Strait Islander women takes place in relation to all measures and decisions that affect Aboriginal and Torres Strait Islander women.

4.4 Incarceration

90. 2011 marked the 20 year anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC).⁷⁸ There are now more Aboriginal and Torres Strait Islander people in prison than when the RCIADIC reported. In 1991 Aboriginal and Torres Strait Islander prisoners made up 14% of the overall prison population.⁷⁹ This has increased to around 25%.⁸⁰ Aboriginal and Torres Strait Islander adults are 14 times more likely to be in prison than non Aboriginal and Torres Strait Islander Australians.⁸¹
91. The Commission is concerned about the increase in the number of Aboriginal and Torres Strait Islander women in prison and disproportionate numbers of Aboriginal and Torres Strait Islander people in prison. From 2000 to 2010, the number of Aboriginal and Torres Strait Islander women in prison increased 113%.⁸² In contrast, the number of Aboriginal and Torres Strait Islander men in prison increased 83% over the same period.⁸³

Annex A: Report on the UN Special Rapporteur on violence against women's study tour, April 2012

¹ CEDAW Committee, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010), para 50. At www2.ohchr.org/english/bodies/cedaw/cedaws46.htm (viewed 29 March 2012).

² See also Australian Human Rights Commission, *Response to the Office of the High Commissioner for Human Rights Questionnaire for the Preparation of the Analytical Study on Violence Against Women and Girls with Disability* (A/HRC/RES/17/11), p 5. At http://www.humanrights.gov.au/disability_rights/hr_disab/vhb/2011_AHRC%20Response%20to%20UN%20questionnaire%20for%20the%20preparation%20of%20the%20analytical%20study%20on%20violence%20against%20women%20with%20disability.pdf (viewed 10 August 2012).

³ The Action Plan on Women, Peace and Security establishes a policy framework for a coordinated, whole of government approach to implementing the UN Security Council Resolution 1325 on women, peace and security as well as related resolutions. To this end, it outlines 'what Australia will do, at home and overseas, to integrate a gender perspective into its peace and security efforts, protect women and girls' human rights, and promote their participation in conflict prevention, management and resolution'.

The Action Plan on Women, Peace and Security is guided by five key thematic areas for conceptualising and organising activities in the implementation of the Government's women, peace and security agenda: prevention; participation; protection; relief and recovery; and normative. The Government has committed to reporting to the Australian Parliament every two years on its progress in implementing the Action Plan on Women, Peace and Security. *Australian National Action Plan on Women, Peace and Security 2012-2018* (2012). At www.fahcsia.gov.au/our-responsibilities/women/publications-articles/government-international/australian-national-action-plan-on-women-peace-and-security-2012-2018 (viewed 14 August 2012).

⁴ *National Plan to Reduce Violence against Women and Their Children 2010-2022* (2011). At www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children (viewed 14 August 2012).

⁵ Above, p 15.

⁶ Department of Families, Community Services and Indigenous Affairs, *National Plan to Reduce Violence Against Women and Their Children – Questions and Answers*, www.fahcsia.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children/the-national-plan-to-reduce-violence-against-women-questions-and-answers (viewed 10 August 2012).

⁷ Standing Committee of Attorneys-General, *Current Projects and Achievements*, www.lawlink.nsw.gov.au/lawlink/scag/ll_scag.nsf/pages/scag_achievements#National%20Plan%20to%20Reduce%20Violence (viewed 10 August 2012).

⁸ Attorney-General's Department, *Everyday Justice for Everyone – the story so far from the Attorney-General's Department*. At www.ag.gov.au/Publications/Documents/the-story-so-far-from.pdf (viewed 10 August 2012).

⁹ The Government announced the changes in partial response to the Australian Law Reform Commission's Inquiry into family violence and Commonwealth Laws, see Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks*, Report No 117 (2012). At www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws (viewed 31 July 2012).

¹⁰ Minister for the Status of Women, 'Ministers agree to build better evidence base on violence against women' (Media Release, 18 July 2012), At www.juliecollins.fahcsia.gov.au/node/212 (viewed 8 August 2012).

¹¹ Australia Non Government Organisations, *Follow-up Report to the United Nations Committee on the Elimination of Discrimination Against Women* (17 August 2012) pp 4-7. At <http://awava.org.au/wp-content/uploads/2012/08/Australian-NGOs-Follow-up-Report-to-CEDAW-Committees-2010-Interim-Recommendations.pdf> (viewed 21 August 2012).

¹² This issue is raised in the Commission's *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*. See also the NGO Follow Up Report to the CEDAW Committee, July 2012, above.

¹³ UN Women, *Good Practices in National Action Plans on Violence Against Women*, Report of the Expert Group Meeting (2010), p 65. At www.un.org/womenwatch/daw/vaw/egm/nap2010/MF_FINAL_FINAL_23_May.pdf (viewed 10 August 2012).

¹⁴ Above, p 72.

¹⁵ Above, p 73.

¹⁶ Above, p 74.

¹⁷ Australian Bureau of Statistics, *Personal Safety Survey 2005 (Reissue)* Catalogue No 4906.0 (2006), p 34. At [www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument) (viewed 10 August 2012).

¹⁸ National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and Their Children* (2009), p 4. At www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/national-plan-to-reduce-violence-against-women-and-their-children/economic-cost-of-violence-against-women-and-their-children (viewed 10 August 2012).

¹⁹ See CEDAW Committee, *Kell v Canada*, Communication No. 19/2008, UN Doc CEDAW/C/51/D/19/2008 (2012), para 10.7. At www2.ohchr.org/english/law/docs/CEDAW-C-51-D-19-2008_en.pdf (viewed 17 August 2012), in which the Committee acknowledges that domestic and family violence can affect women's employment.

²⁰ Ludo McFerran, *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey* (2011), p 8. At www.adfvc.unsw.edu.au/PDF%20files/Domestic_violence_and_work_survey_report_2011.pdf (viewed 29 March 2012).

²¹ Above, at p 10.

²² FaHCSIA, *National Plan to Reduce Violence against Women and Their Children 2010-2022* (2011), p 16. At www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx (viewed 29 March 2012).

²³ See Safe at Home, Safe at Work Project, *Homepage*, www.dvandwork.unsw.edu.au (viewed 27 July 2012).

²⁴ For example domestic and family violence clauses, see Safe at Home, Safe at Work Project, *Domestic and Family Violence Clauses*, www.dvandwork.unsw.edu.au/domestic-and-family-violence-clauses (viewed 31 July 2012).

²⁵ Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks*, Report No 117 (2012), p 23. At www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws (viewed 3 August 2012). This review has since been concluded, see: Fair Work Review Panel, *Towards more productive and equitable workplaces: an evaluation of the Fair Work legislation*, Department of Education, Employment and Workplace Relations (2012). At www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/Towards_more_productive_and_equitable_workplaces.pdf (viewed 10 August 2012).

²⁶ Above. The recent review of the *Fair Work Act* recommended that that Government consider amending section 65 to include 'a wider range of caring and other circumstances'. Domestic and family violence was expressly noted in the discussion. Fair Work Review Panel, *Towards more productive and equitable workplaces: an evaluation of the Fair Work legislation*, (2012), pp 96-99. At www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/Towards_more_productive_and_equitable_workplaces.pdf (viewed 10 August 2012).

²⁷ *Fair Work Act 2009* (Cth), s 65.

²⁸ Donna Chung et al, *Home Safe Home: the Link Between Domestic and Family Violence and Women's Homelessness* (2000). At www.fahcsia.gov.au/our-responsibilities/housing-support/publications-articles/homelessness-women/home-safe-home-the-link-between-domestic-and-family-violence-and-womens-homelessness (viewed 27 July 2012).

²⁹ See, for example Australian Human Rights Commission, *Submission to the Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws: Employment and Superannuation* (21 April 2011), para 47. At www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html (viewed 29 March 2012).

³⁰ Ludo McFerran, *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey* (2011), p 13. At www.adfvc.unsw.edu.au/PDF%20files/Domestic_violence_and_work_survey_report_2011.pdf (viewed 10 August 2012).

³¹ See CEDAW Committee, *General Recommendation No 19: Violence against Women*, UN Doc A/47/38 (1992) and CEDAW Committee, *General Recommendation No 28: Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/GC/28 (2010).

³² Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks* (ALRC Report 117), p 23. At <http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws> (viewed 3 August 2012).

³³ The issue of discrimination against victims and survivors of domestic or family violence was noted in the Attorney-General's Department *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011), para 85. At www.ag.gov.au/Humanrightsandantidiscrimination/Australianshumanrightsframework/Pages/ConsolidationofCommonwealthantidiscriminationlaws.aspx (viewed 29 March 2012). On 3 November 2011 the Commission hosted a roundtable discussion with representatives from women's NGOs, working women's advocates and other stakeholders to discuss the introduction of a new ground of discrimination.

³⁴ See Australian Human Rights Commission, *Consolidation of Commonwealth Discrimination Law: Supplementary Submission to the Attorney-General's Department* (23 January 2012). At http://humanrights.gov.au/legal/submissions/2012/20120123_consolidation.html (viewed 29 March 2012); Andrea Durbach, *Domestic Violence Discrimination and the Consolidation of Commonwealth Anti-Discrimination Laws* (Speech delivered at the Safe at Home, Safe at Work Conference, Melbourne, 5 December 2011). At http://humanrights.gov.au/about/media/speeches/sex_discrim/2011/20111205_domestic_violence.html (viewed 29 March 2012).

³⁵ Australian Human Rights Commission, *Sexual Harassment: Serious Business – Results of the 2008 Sexual Harassment National Telephone Survey* (2008), p 6. At http://humanrights.gov.au/sexualharassment/serious_business/index.html (viewed 29 March 2012).

³⁶ Above, pp 7-8, 23.

³⁷ Australian Human Rights Commission, *Encourage. Support. Act! Bystander Approaches to Sexual Harassment* (2012). At www.humanrights.gov.au/sexualharassment/bystander/ (viewed 31 July 2012).

³⁸ Above, pp 5-7.

³⁹ Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy: Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011). At <http://humanrights.gov.au/defencereview/index.html> (viewed 29 March 2012).

⁴⁰ See Bronwyn Grey, *Report of the Review into Policies and Practices to Deal with Sexual Harassment at the Australian Defence Force Academy, 1998* (1998). Also known as the Grey Review.

⁴¹ See Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy: Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011). At <http://humanrights.gov.au/defencereview/index.html> (viewed 29

March 2012); Elizabeth Broderick, *Review into the Treatment of Women in the Australian Defence Force Academy* (Speech delivered at the Australian Human Rights Commission, Sydney, 3 November 2011). At http://humanrights.gov.au/about/media/speeches/sex_discrim/2011/20111103_adfa.html (viewed 29 March 2012).

⁴² Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force, Phase 2 Report* (2012), pp 258-261. At <http://www.hreoc.gov.au/defencereview/index.html> (viewed 25 August 2012).

⁴³ See Anna Ferrante *et al.*, *Measuring the Extent of Domestic Violence* (1996), p 34.

⁴⁴ See Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (Commonwealth of Australia, 2009), p 26. At www.pc.gov.au/gsp/reports/indigenous/keyindicators2009 (viewed 29 March 2012).

⁴⁵ Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples Catalogue No 4704.0* (2008), p 10. At www.abs.gov.au/AUSSTATS/abs@.nsf/39433889d406eeb9ca2570610019e9a5/8F08EF0297F11CC6CA2574390014C588?opendocument (accessed 10 August 2012).

⁴⁶ Hamish Fitzsimmons, 'Systemic Failures Lead to Domestic Murder', *Lateline, Australian Broadcasting Corporation*, 2 September 2010. At www.abc.net.au/lateline/content/2010/s3001223.htm (viewed 29 March 2012).

⁴⁷ Australian Human Rights Commission, *Submission to Western Australia Coronial Inquest into the Death of Andrea Louise Pickett* (25 June 2012). At [www.humanrights.gov.au/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20\(2\).pdf](http://www.humanrights.gov.au/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20(2).pdf) (viewed 10 August 2012). See generally, Christiana Jones, 'Rights issue in murder inquest', *The West Australian*, 20 December 2011. At <http://au.news.yahoo.com/thewest/a/-/breaking/12405933/rights-issue-in-murder-inquest/> (viewed 10 August 2012); Daniel Emerson, 'System "fails women in danger"', *The West Australian*, 7 March 2012. At <http://au.news.yahoo.com/thewest/a/-/breaking/13103257/system-fails-women-in-danger/> (viewed 10 August 2012).

⁴⁸ State Coroner of WA, *Findings of Inquest Into the Death of Andrea Louise Pickett* (28 June 2012). At www.humanrights.gov.au/legal/submissions_court/guidelines/Pickett_finding.pdf (viewed 31 July 2012).

⁴⁹ Above, at pp 41-42.

⁵⁰ Above, at pp 42-47.

⁵¹ Above, at pp 47-55.

⁵² CEDAW Committee, *Kell v Canada*, Communication No. 19/2008, UN Doc CEDAW/C/51/D/19/2008 (2012), para 11(b)(i). At www2.ohchr.org/english/law/docs/CEDAW-C-51-D-19-2008_en.pdf (viewed 17 August 2012).

⁵³ Women With Disabilities Australia, *Submission to the Australian Government Consultation Paper: Family Violence – Improving Legal Frameworks* (June 2010), p 6. At www.wwda.org.au/WWDASubFVL2010.pdf (viewed 31 July 2012).

⁵⁴ Women With Disabilities Australia, *Submission to the UN Analytical Study on Violence against Women With Disabilities* (December 2011), para 7. At www.wwda.org.au/WWDASubUNStudyViolenceWWDDec2011.pdf (viewed 31 July 2012).

⁵⁵ Examples of these barriers include the lack of accessible counselling services, inadequate carer and services provider training on gender and disability, the inaccessibility of crisis accommodation and limited support for women with disability seeking to navigate the legal system. These issues were raised in the Australian Human Rights Commission *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*.

⁵⁶ FaHCSIA, *National Disability Strategy 2010-2020* (2011), p 39. At http://fahcsia.gov.au/sites/default/files/documents/05_2012/national_disability_strategy_2010_2020.pdf, (viewed 31 July 2012).

⁵⁷ See, for example Janine Dillon, *Violence against People with Cognitive Impairments*, Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria (2010). At www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf (viewed 1 August 2012); Sonya Price-Kelly & Maria Attard, *Accommodating Violence: The Experience of Domestic Violence and People with Disability Living in Licensed Boarding Houses*, Disability and Domestic Violence in Residential Settings Project (2010). At www.pwd.org.au/documents/pubs/Accommodating%20Violence%20Report.doc (viewed 10 August 2012).

⁵⁸ See Helen Meekosha, 'Gender and Disability', *Encyclopaedia of Disability* (2005), pp 764-769. Earlier draft at <http://wwda.org.au/meekoshagendis1.pdf> (viewed 1 August 2012).

⁵⁹ See the issues raised in the Australian Human Rights Commission, *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*.

⁶⁰ CEDAW Committee, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010), para 43.

⁶¹ See the issues raised in the Australian Human Rights Commission *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*, and Janine Dillon, *Violence against People with Cognitive Impairments*, Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria (2010). At www.publicadvocate.vic.gov.au/file/file/Research/Reports/Violence%20and%20disability%20report%202010.rtf (viewed 1 August 2012).

⁶² See also Australian Human Rights Commission, *Response to the Office of the High Commissioner for Human Rights Questionnaire for the Preparation of the Analytical Study on Violence Against Women and Girls with Disability (A/HRC/RES/17/11)*, p 5. At http://www.humanrights.gov.au/disability_rights/hr_disab/vhb/2011_AHRC%20Response%20to%20UN%20questionnaire%20for%20the%20preparation%20of%20the%20analytical%20study%20on%20violence%20against%20women%20with%20disability.pdf (viewed 10 August 2012).

⁶³ Above, p 12; Women with Disabilities Australia, *Sterilisation of Women and Girls with Disabilities - An update on the issue in Australia* (2011), p 2. At www2.ohchr.org/english/bodies/cedaw/docs/cedaw_crc_contributions/WomenwithDisabilitiesAustralia.pdf (viewed 10 August 2012).

⁶⁴ The Australian Guardianship and Administration Council has introduced guidelines to assist guardianship tribunals in exercising their power to authorise sterilisations, see Australian Guardianship and Administration Council, *Protocol for Special Medical Procedures (Sterilisation)* (2009). At www.agac.org.au/images/stories/agac_sterilisation_protocol_30_mar_09.pdf (viewed 31 July 2012).

⁶⁵ Australian Human Rights Commission, *Report of the UN Special Rapporteur on violence against women's study tour, April 2012*.

⁶⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Australia*, UN Doc A/HRC/17/10 (24 March 2011), para 86.39. At www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CAUSession10.aspx (viewed 10 August 2012).

⁶⁷ UN Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (20 October 2005), paras 45-46; CEDAW Committee, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUL/CO/7 (30 July 2010), paras 43-44.

⁶⁸ In 2010, the Sex Discrimination Commissioner recommended that the Australian Government invite the UN Special Rapporteur on Violence against Women to visit Australia to contribute to independent monitoring of the nation's 'zero tolerance' approach to gender-based violence, see Australian Human Rights Commission, *Gender Equality Blueprint* (2010). At http://humanrights.gov.au/sex_discrimination/publication/blueprint/Gender_Equality_Blueprint.pdf (viewed 10 August 2012). The Commission organised the Study tour in response to this recommendation.

⁶⁹ National Congress of Australia's First Peoples, *About Us*, <http://nationalcongress.com.au/> (viewed 10 August 2012).

⁷⁰ Above, pp 10-13.

⁷¹ National Congress of Australia's First Peoples, *National Congress Report 2011: Building Our Foundations* (2011), p 7. At <http://nationalcongress.com.au/wp-content/uploads/2011/08/ReportPart1.pdf> (viewed 14 August 2012).

⁷² *Stronger Futures in the Northern Territory Act 2012* (Cth).

⁷³ *Stronger Futures in the Northern Territory Act 2012* (Cth), s 118(1).

⁷⁴ See Australian Human Rights Commission, *Submission to the Senate Community Affairs Legislation Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related Bills* (6 February 2012), paras 198-200. At www.humanrights.gov.au/legal/submissions/2012/20120206_stronger.pdf (viewed 14 August 2012).

⁷⁵ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295. UN Doc A/61/L.67 (2007), arts 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28. 30-32, 36-38 and 40-41.

⁷⁶ Above, art 22.

⁷⁷ United Nations Human Rights Council, *Expert Mechanism Advice No 2: Indigenous peoples and the right to participate in decision-making* (2011), paras 11 and 16. At www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Advice2_Oct2011.pdf (viewed 7 August 2012).

⁷⁸ Royal Commission into Aboriginal Deaths in Custody, *National Report – Volume 1* (1991). At www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/ (viewed 14 August 2012).

⁷⁹ Above, para 9.4.1.

⁸⁰ Australian Bureau of Statistics, *Prisoners in Australia Catalogue No 4517.0* (2011), p 8. At www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02011?OpenDocument (viewed 14 August 2012).

⁸¹ Above.

⁸² Australian Bureau of Statistics, *Prisoners in Australia Catalogue No 4517.0* (2000), p 11. At www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02011?OpenDocument (viewed 14 August 2012). Read in conjunction with Australian Bureau of Statistics, *Prisoners in Australia Catalogue No 4517.0* (2010), p 52. At www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02010?OpenDocument (viewed 14 August 2012). See Eileen Baldry & Chris Cunneen, *Contemporary Penalty in the Shadow of Patriarchy* (Paper for the 5th Annual Australia and New Zealand Critical Criminology Conference, 7- 8 July 2011). At www.jcu.edu.au/cairnsinstitute/public/groups/everyone/documents/conference_proceedings/jcu_104388.pdf (viewed 21 August 2012).

⁸³ Above.