

# Update to the Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women

June 2010

Prepared for the CEDAW Review Project's Aboriginal and Torres Strait Islander Women's Advisory Group by YWCA Australia, Women's Legal Services NSW & Kingsford Legal Centre.<sup>1</sup>

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## Context of this report

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1. This report provides an update on events that have taken place since the *Australian Aboriginal and Torres Strait Islander Women's Parallel NGO Report* was prepared in August 2009. It should be read together with that Report.

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

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### Positive developments

#### ***National Congress of Australia's First Peoples established***

*See page 24 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report. The National Congress is also discussed under Article 7.*

2. On 2 May 2010, a new national Indigenous representative body, the National Congress of Australia's First Peoples (**National Congress**) was established.<sup>2</sup> The National Executive of the National Congress has equal representation of women and men in accordance with the National Congress's commitment to gender equity in leadership and decision-making.<sup>3</sup>

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<sup>1</sup> Parts of this Report Update are based on sections of the *Australian NGO Submission to the UN Committee on the Elimination of Racial Discrimination in Australia*, June 2010, co-authored by Emily Howie, Human Rights Law Resource Centre, and Louise Edwards, National Association of Community Legal Centres; and the *Joint NGO Submission to the Universal Periodic Review of Australia - July 2010*, which was principally authored by the Human Rights Law Resource Centre, Kingsford Legal Centre and the National Association of Community Legal Centres. The development of this report has been supported by funding from the Australian Government through the Women's Leadership and Development Program.

<sup>2</sup> Commissioner Gooda, Australian Human Rights Commission Aboriginal and Torres Strait Islander Social Justice Commissioner, Media Release, *First National Executive is a milestone moment for Indigenous Australians*, 2 May 2010, available at [http://www.humanrights.gov.au/about/media/media\\_releases/2010/40\\_10.html](http://www.humanrights.gov.au/about/media/media_releases/2010/40_10.html)

<sup>3</sup> Report of the Steering Committee for the creation of a new National Representative Body, Australian Human Rights Commission *Our future in our hands – Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples (Steering Committee Report)*, 2009, August 2009, p.23, available at [http://hreoc.gov.au/social\\_justice/rebody/report2009/report.pdf](http://hreoc.gov.au/social_justice/rebody/report2009/report.pdf)

3. The National Congress is an independent non-government entity that aims to ‘provide national leadership in advocating for the recognition of the status of Aboriginal peoples as First Nations peoples, in protecting our rights and advancing the wellbeing of our communities.’<sup>4</sup> The Congress’s functions will be formulating policy and advice and lobbying on behalf of Aboriginal and Torres Strait Islander peoples. The Australian Government supported the establishment of the National Congress, which is expected to be fully operational by January 2011.<sup>5</sup>

*Additional recommendations proposed for Concluding Comments*

- ⇒ THAT the National Congress of Australia’s First Peoples be commended for its leadership in establishing an executive with equal representation of women and men.
- ⇒ THAT the Australian Government be commended for its support for the establishment of the National Congress of Australia’s First Peoples.
- ⇒ THAT the Australian Government continue to support the National Congress of Australia’s First Peoples to become fully operational by January 2011.
- ⇒ THAT the Australian Government adopt mechanisms to ensure that the opinions of the National Congress are into account by the Government.

***Funding of National Aboriginal and Torres Strait Islander Women’s Alliance by Australian Government***

*See page 23 of the Australian Aboriginal and Torres Strait Islander Women’s Parallel NGO Report.*

4. In March 2010 the Australian Government’s Office for Women offered funding to six National Women’s Alliances, including the National Aboriginal and Torres Strait Islander Women’s Alliance (NATSIWA).<sup>6</sup> NATSIWA is made up of Aboriginal and Torres Strait Islander women and their organisations. NATSIWA will provide a national forum for Aboriginal and Torres Strait Islander women to actively engage with the Australian Government about policy issues and decisions that affect our lives and communities. NATSIWA is in the process of being established and is expected to be fully operational by August 2010.

*NATSIWA is also discussed under Article 7.*

*Additional recommendations proposed for Concluding Comments*

- ⇒ THAT the Australian Government be commended for its support for the establishment of the National Aboriginal and Torres Strait Islander Women’s Alliance (NATSIWA).
- ⇒ THAT the Australian Government actively engage in genuine consultation and partnership with Aboriginal and Torres Strait Islander women and organisations, including NATSIWA, about policy issues and decisions that affect our lives and communities.

<sup>4</sup> Steering Committee Report, as above, p.26.

<sup>5</sup> Commissioner Calma, Australian Human Rights Commission Aboriginal and Torres Strait Islander Social Justice Commissioner, Media Release, *New National Congress of Australia’s First Peoples announced*, 22 November 2009, available at [http://www.hreoc.gov.au/about/media/media\\_releases/2009/116\\_09.html](http://www.hreoc.gov.au/about/media/media_releases/2009/116_09.html)

<sup>6</sup> See [http://fahcsia.gov.au/sa/women/progserv/equal/Pages/engaging\\_womens\\_org.aspx](http://fahcsia.gov.au/sa/women/progserv/equal/Pages/engaging_womens_org.aspx)

## Challenges

### ***Special Rapporteur on Indigenous Rights Report***

5. The report of the Special Reporter on Indigenous Rights<sup>7</sup> (**Special Rapporteur's Report**) following his visit to Australia in August 2009 highlighted the significant disadvantage and discrimination that Aboriginal and Torres Strait Islander peoples continue to suffer. The report contains 37 recommendations in key areas, with a focus on the need to ensure that Aboriginal and Torres Strait Islander peoples are included in decision making about matters that affect them.

### *Additional recommendations proposed for Concluding Comments*

⇒ THAT the Australian Government give key consideration to each of the Special Rapporteur's recommendations in real and genuine partnership and collaboration with Aboriginal and Torres Strait Islander peoples.

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

*See page 21 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report*

6. Australia continues to be the only developed nation without comprehensive constitutional or legislative protection of basic human rights at a national level and will remain so until at least 2014.
7. Please see paragraphs 3 and 4 of the *Australian NGO Report Update (June 2010)* for a discussion of the 2009 National Human Rights Consultation and the Australian Government's new National Human Rights Framework.
8. Although the report of the National Human Rights Consultation examined human rights issues faced by Indigenous Australians, it failed to specifically address discrimination against Aboriginal and Torres Strait Islander women, including intersectional discrimination (see also paragraph 11 below about anti-discrimination laws).

### *Additional recommendations proposed for Concluding Comments*

⇒ THAT any national Human Rights Act specifically protects the rights of Aboriginal and Torres Strait Islander women.

⇒ THAT while the national Human Rights Act is being developed, the Australian Government incorporates the specific human rights issues faced by Aboriginal and Torres Strait Islander women into the National Human Rights Framework as a priority.

⇒ THAT the Australian Government develop and release a draft exposure Human Rights Bill that makes explicit reference to human rights protection for Aboriginal and Torres Strait Islander women in advance of the review of the Human Rights Framework in 2014.

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<sup>7</sup> A/HRC/15) 4 March 2010, *The Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya* to the UN Human Rights Council follows an official visit to Australia in August 2009 and will be tabled at the UN Human Rights Council in September 2010. Advance copies are available at <http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/ReportVisitAustralia.pdf> (at 23 June 2010).

## ***Eliminating discrimination – Australian Government response to Sex Discrimination Act review***

*See page 22 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report*

9. In April 2010, the Australian Government responded to the Senate Legal and Constitutional Affairs Committee's *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality in Australia* report (**Review Report**).<sup>8</sup> The Government response is discussed at paragraph 1 of the *Australian NGO Report Update*.
10. Disappointingly both the Review Report and the Government's response to the Review Report<sup>9</sup> fail to examine or address the unique forms of discrimination experienced by Aboriginal and Torres Strait Islander women, including intersectional discrimination.
11. As part of its new Human Rights Framework, the Australian Government also announced in April 2010 that it will review the four national anti-discrimination laws, including the *Sex Discrimination Act*, with a view to consolidating and harmonising equality protection in a single comprehensive Act (**the consolidation project**).<sup>10</sup> The consolidation project will provide a unique opportunity to introduce stronger, clearer and more effective equality laws that specifically address the human rights issues faced by Aboriginal and Torres Strait Islander women, including intersectional discrimination.

### ***Additional recommendations proposed for Concluding Comments***

- ⇒ THAT the Australian Government introduces a comprehensive Equality Act that specifically addresses discrimination against Aboriginal and Torres Strait Islander women and provides for the achievement of substantive equality for Aboriginal and Torres Strait Islander women, including protection against intersectional discrimination.
- ⇒ THAT the Australian Government implements, as a matter of priority, its project to consolidate and harmonise Australia's anti-discrimination laws and that it does so on the basis of broad consultation and in a manner that strengthens anti-discrimination laws and does not diminish existing federal protections.

### ***Northern Territory Intervention***

*See pages 24-28 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

#### ***Status of Intervention***

12. The Northern Territory Emergency Response (**NTER**) is still in place after three years and has recently been amended by the Australian Government following a consultation process with Aboriginal communities affected by the NTER (see discussion at paragraphs 17 and 18 below about the nature and adequacy of these consultations). Although the NTER reforms seek to fully reinstate the operation of the *Racial Discrimination Act 1975* (Cth) (**RDA**) from 31 December 2010 (after a six month transition period), which is welcome, many Aboriginal and Torres Strait Islander women are still concerned that the NTER remains racially discriminatory despite the reforms.

<sup>8</sup> Available at [www.aph.gov.au/SEnate/committee/legcon\\_ctte/sex\\_discrim/report/index.htm](http://www.aph.gov.au/SEnate/committee/legcon_ctte/sex_discrim/report/index.htm)

<sup>9</sup> Available at [www.aph.gov.au/SEnate/committee/legcon\\_ctte/sex\\_discrim/gov\\_response.pdf](http://www.aph.gov.au/SEnate/committee/legcon_ctte/sex_discrim/gov_response.pdf)

<sup>10</sup> Robert McClelland, Attorney-General and Lindsay Tanner, Minister for Finance and Deregulation, Joint Media Release, *Reform of Anti-Discrimination legislation*, 21 April, 2010, available at [http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_SecondQuarter\\_21April2010-ReformofAnti-DiscriminationLegislation](http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_21April2010-ReformofAnti-DiscriminationLegislation)

### *Recent NTER reforms*

13. On 21 June, 2010, legislation amending the NTER<sup>11</sup> was passed by the Australian Parliament. The Australian Government states that the amendment legislation ‘repeals all Northern Territory Emergency Response (NTER) laws that suspend the operation of the RDA’.<sup>12</sup> The amendment legislation also reinstates Northern Territory and Queensland anti-discrimination laws.<sup>13</sup>
14. The reforms also mean that the compulsory income management regime, a key feature of the NTER, is being expanded to other communities across Australia. From 1 July 2010 – 31 December 2010, income management will be rolled out across the Northern Territory - in urban, regional and remote areas – as a first step in a national rollout of income management for a range of income support payment recipients - both Indigenous and non-Indigenous - in disadvantaged regions. The rollout has been criticised for having many disturbing aspects and lacking an evidence base (see paragraphs 27 and 28 of the *Australian NGO Report Update* for more information). The new regime is expected to disproportionately affect Aboriginal communities resulting in many Aboriginal people being unnecessarily income-managed.
15. As well as changing the compulsory income management regime, the Government says it has also ‘redesigned a number of other [NTER] measures so they are more sustainable and more clearly special measures under the Racial Discrimination Act.’<sup>14</sup> The Government states that ‘[a]lcohol and pornography restrictions, five-year leases, community store licensing and law enforcement powers have been re-designed to more clearly be special measures that help Indigenous people in the NT to achieve equal human rights’ and that the measures were re-designed following extensive consultations in 2009 with Indigenous Australians in the Northern Territory (**Redesign Consultations**).<sup>15</sup>

### *NTER reforms and ‘special measures’*

16. The RDA will remain suspended in relation to NTER measures until 31 December 2010 to allow for transition to the reformed NTER measures. Going forward, the Australian Government believes that ‘all NTER measures are either special measures under the Racial Discrimination Act or non-discriminatory and thus consistent with the Racial Discrimination Act.’<sup>16</sup>
17. Although there are mixed views about the NTER, some women are concerned about the characterisation of some NTER measures as ‘special measures’ under the RDA and the Australian Government’s claim that they are not discriminatory. It is generally accepted that special measures relate to so-called ‘positive discrimination’ and cannot be used to justify

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<sup>11</sup> Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 and Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 (**amendment legislation**).

<sup>12</sup> Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs and Warren Snowden, Minister for Minister for Indigenous Health, Rural and Regional Health & Regional Services Delivery, Joint Media Release, *Racial Discrimination Act to be restored in the Northern Territory*, 22 June 2010 (**Joint NTER Media Release**), available at [http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm\\_m\\_rda\\_22june2010.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_rda_22june2010.aspx)

<sup>13</sup> Social Security and Other Legislation (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, Senate Second Reading Speech, 25 February 2010 (**Senate Second Reading Speech**), p.1157, available at [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/2010-02-25/0044/hansard\\_frag.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/2010-02-25/0044/hansard_frag.pdf;fileType=application%2Fpdf)

<sup>14</sup> Senate Second Reading Speech, as above, p.1157.

<sup>15</sup> Joint NTER Media Release, as above.

<sup>16</sup> Senate Second Reading Speech, p. 1157. Section 8(1) of the RDA which deals with special measures incorporates the International Covenant on the Elimination of Racial Discrimination (**ICERD**) position.

‘negative discrimination’ such as the redesigned NTER measures. Further, if special measures are legitimate, they need to be developed on the basis of prior consultation with affected communities and the active participation of such communities.<sup>17</sup> Serious concerns have been raised about the Government’s Redesign Consultations process it has relied on to demonstrate Aboriginal people’s support for the NTER measures. Criticisms of the Redesign Consultations process include a lack of independence; lack of notice to communities about the consultations; insufficient interpreters and inadequate explanations of the NTER measures and complex legal concepts; and that the consultations were geared towards pre-determined outcomes.<sup>18</sup>

18. In the view of many, the Redesign Consultations were not adequate to indicate consent by Aboriginal people to special measures and did not meet the benchmarks established in the United Nations Declaration on the Rights of Indigenous Peoples requiring ‘free, proper and informed consent’ from Indigenous peoples before adopting and implementing legislative or administrative measures that may affect them.<sup>19</sup> There are concerns that racial discrimination under the NTER continues despite the recent NTER reforms and many believe that further changes are needed to bring the NTER into line with Australia’s international human rights obligations. While the safety and wellbeing of Aboriginal and Torres Strait Islander women and children must be protected and enhanced, a less discriminatory and rights-impairing approach needs to be taken. In the words of the Special Rapporteur:

there must be better alternatives to the current NTER scheme that could incorporate a holistic approach to advancing the security and well-being of indigenous women and children along with the wellbeing and rights of all indigenous individuals and of the communities that they constitute. Several indigenous women with whom the Special Rapporteur met pleaded for such a holistic approach while explaining that their rights as indigenous women are inextricably bound to their capacity to make choices for themselves and the self-determination and cultural integrity of their communities.<sup>20</sup>

#### *Additional recommendations proposed for Concluding Comments*

- ⇒ THAT the Australian Government repeal the remaining aspects of the Northern Territory Intervention legislation that are racially discriminatory and otherwise incompatible with domestic and international human rights standards and fully reinstate the operation of the *Racial Discrimination Act 1975* (Cth).
- ⇒ THAT the Australian Government establish a policy of consultation with Aboriginal and Torres Strait Islander communities that meets the benchmarks established in the Declaration on the Rights of Indigenous Peoples requiring genuine respect for cultural integrity and self determination.
- ⇒ THAT the Australian Government halt its compulsory income management scheme and ensure that any income management scheme is voluntary, developed in consultation with affected communities and part of a broader strategy to improve pathways out of poverty, social exclusion and unemployment.

<sup>17</sup> See CERD/C/GC/32, 24 September 2009, CERD General Recommendation No 32 of August 2009 on the meaning and scope of special measures in ICERD, available at <<http://www.unhcr.org/refworld/pdfid/4adc30382.pdf>>. See also Special Rapporteur Report, [21].

<sup>18</sup> See Nicholson, Behrendt, Vivian, Watson and Harris, Will they be heard? – a response to the NTER Consultations June to August 2009 (November 2009), available at <[http://www.childjustice.org/docs/will\\_they\\_be\\_heard.pdf](http://www.childjustice.org/docs/will_they_be_heard.pdf)>. See also, Cultural & Indigenous Research Centre Australia, *Report on the NTER Redesign Engagement Strategy and Implementation Final Report* (September 2009), available at <[http://www.fahcsia.gov.au/sa/indigenous/pubs/nter\\_reports/Documents/redesign\\_engagement\\_strategy/final\\_report\\_09\\_engage\\_strat.PDF](http://www.fahcsia.gov.au/sa/indigenous/pubs/nter_reports/Documents/redesign_engagement_strategy/final_report_09_engage_strat.PDF)>. See also Special Rapporteur Report, [32].

<sup>19</sup> Article 19 of the Declaration on the Rights of Indigenous Peoples.

<sup>20</sup> Special Rapporteur Report, as above, [28].

## **Articles 7 and 8: Public participation and International participation**

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### **Positive developments**

#### ***National Congress of Australia's First Peoples established***

*See page 31 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

19. The National Congress is discussed at paragraphs 1 and 2 above in relation to Articles 1-3.

#### ***Funding of National Aboriginal and Torres Strait Islander Women's Alliance by Office for Women***

*See page 23 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

20. NATSIWA is discussed at paragraph 3 above in relation to Articles 1-3.

#### ***Commission on the Status of Women***

*See page 34 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

21. The Australian Government fully funded two Indigenous women to attend the March 2010 meeting of the United Nations' Commission on the Status of Women.

#### ***Additional recommendations proposed for Concluding Comments***

⇒ THAT the Australian Government be commended for its support of Aboriginal and Torres Strait Islander women at the Commission on the Status of Women and that it continue to support the role and full participation of Aboriginal and Torres Strait Islander women in UN meetings, conferences and international human rights forums.

### **Challenges**

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

22. See paragraphs 17 and 18 above in relation to the 2009 Northern Territory Intervention Redesign Consultations.

#### ***No representation until early 2011***

23. The National Congress is discussed at paragraphs 1 and 2 above in relation to Articles 1-3. Until the Congress is fully operational, Aboriginal and Torres Strait Islander Australians will still be limited in their ability to fully participate in policy formulation.

## **Article 12: Health**

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*See pages 49-54 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

### **Positive developments**

#### ***National Aboriginal and Torres Strait Islander Women's Health Strategy released***

24. In May 2010 the first *National Aboriginal and Torres Strait Islander Women's Health Strategy*<sup>21</sup> was launched. The strategy was developed by the Australian Women's Health

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<sup>21</sup> Available at <http://www.awhn.org.au/images/stories/National%20Aboriginal%20and%20Torres%20Strait%20Islander%20Womens%20Strategy%20May%202010.pdf>

Network Aboriginal Women's Talking Circle and involved consultations with over 400 women working in Aboriginal and Torres Strait Islander women's health.

25. The aim of the strategy is to address the gap between Indigenous and non-Indigenous women's health. The report looks at the state of Indigenous women's health; the processes and findings of Australian Women's Health Network Talking Circle; and identified priorities and needs as articulated by Aboriginal and Torres Strait Islander women.
26. The Australian Government has welcomed the strategy's findings and said it will consider them when developing future policy.<sup>22</sup>

#### *Additional recommendations proposed for Concluding Comments*

⇒ THAT the Australian Government and other governments endorse and fund the recommendations and take appropriate action as part of initiatives to improve the life expectancy gap between Indigenous and non-Indigenous Australians.

### **Challenges**

#### ***Lack of comprehensive health plan to 'close the gap'***

*See page 52 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

27. Close the Gap is a coalition of more than 40 of Australia's leading health, human rights and Aboriginal organisations. On 11 February 2010 the Close the Gap Steering Committee for Indigenous Health Equality's *Shadow Report on the Australian Government's progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians (Close the Gap Shadow Report)* was released.<sup>23</sup>
28. The report found that while the Government had taken some positive steps in putting in place a number of national agreements to address Indigenous health, the Government has no comprehensive long-term plan (with measurable targets) to close the gap on Aboriginal and Torres Strait Islander health inequality by 2030 despite its commitment to this goal. The Shadow Report also found a lack of critical support for Aboriginal medical services and the absence of a true partnership approach by Government.
29. The report also found that:
  - the Government's engagement with Aboriginal and Torres Strait Islander peoples happens on an ad hoc basis and focuses on policy implementation rather than design – more inclusive and genuine partnership is critical to close the gap;
  - the Government's National Indigenous Workforce Training Plan needs to be more comprehensive to meet the gaps in the Indigenous health workforce;
  - despite committing to supporting and developing Aboriginal Community Controlled Health services in urban, rural and remote areas – which the Australian Medical Association recognises is the preferred option for providing health care to Indigenous peoples – the bulk of the \$1.6 billion injection into Indigenous health is going towards mainstream health services;

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<sup>22</sup> Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs and Warren Snowden, Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery, Joint Media Release, *Indigenous Women's Health Strategy Welcomed*, 20 May 2010, available at <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr10-ws-ws048.htm?OpenDocument&yr=2010&mth=5>

<sup>23</sup> Available at <http://www.oxfam.org.au/resources/filestore/originals/OAus-CloseTheGapShadowReport-0210.pdf>

- there is no comprehensive plan for addressing the social and cultural determinants of health; and
- a lack of adequate data collection and monitoring over many years means that a detailed breakdown of health services gaps for Aboriginal and Torres Strait Islander peoples is not available.<sup>24</sup>

30. The UN Special Rapporteur on Health also recently noted the need for a comprehensive national plan to achieve the targets in ‘Close the Gap’.<sup>25</sup>

#### *Additional recommendations proposed for Concluding Comments*

- ⇒ THAT the Australian Government immediately take steps to build an inclusive and genuine partnership with Aboriginal and Torres Strait Islander Australians on health policy design to close the gap in life expectancy between Indigenous and non-Indigenous Australians.
- ⇒ THAT the Australian Government respond to and implement the recommendations of the Close the Gap Shadow Report.

#### **Ear health – new report released**

*See pages 50 and 51 of the Aboriginal and Torres Strait Islander Women’s Parallel NGO Report.*

31. On 13 May 2010, the report of the Senate Community Affairs Committee Inquiry into Hearing Health called *Hear us* was released.<sup>26</sup> Amongst other things, the report looked at the impact of the high rates of hearing loss on Indigenous Australians, such as poor educational and employment outcomes and contact with the criminal justice system, as well as the link between otitis media (middle ear infection), the most common cause of hearing impairment in Indigenous communities, and factors relating to the poverty and disadvantage, such as poor housing, overcrowding, limited access to nutritious food and exposure to passive smoking.<sup>27</sup>

#### *Additional recommendations proposed for Concluding Comments*

- ⇒ THAT the Australian Government implement the recommendations in the *Hear us* report that relate to hearing impairment in Aboriginal and Torres Strait Islander communities.

## **Articles 15 and 16: Equality before the law and equality in family relations**

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### **Positive developments**

#### **Community legal centres and legal aid**

*See page 62 of the Aboriginal and Torres Strait Islander Women’s Parallel NGO Report.*

32. For four years from 1 July 2010, the Australian Government will invest an additional \$154 in legal assistance programs, including \$92.3 million for legal aid, \$34.9 million for Indigenous legal services and \$26.8 million for community legal services programs. While the additional

<sup>24</sup> Australian Human Rights and Equal Opportunity Commission, Media Release, *PM’s report welcome but Government yet to develop plan to Close the Gap: new report*, 11 February 2010, available at [http://www.hreoc.gov.au/social\\_justice/health/media\\_release20090211.html](http://www.hreoc.gov.au/social_justice/health/media_release20090211.html)

<sup>25</sup> A/HRC/14/20/Add.4, 3 June 2010, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.Add4.pdf>

<sup>26</sup> Available at [http://www.apf.gov.au/senate/committee/clac\\_ctte/hearing\\_health/report/report.pdf](http://www.apf.gov.au/senate/committee/clac_ctte/hearing_health/report/report.pdf)

<sup>27</sup> See Chapter 8 of *Hear us* report.

funding is welcome, this is still not sufficient to meet the legal needs of Aboriginal and Torres Strait Islander women who are chronically disadvantaged in their access to justice.

33. The Special Rapporteur recommended that:

Additional funds should be immediately provided to community-controlled legal services to achieve, at a minimum, parity with mainstream legal aid services. In particular culturally-appropriate legal services should be available to all Aboriginal and Torres Strait Islander peoples, including those living in remote areas...<sup>28</sup>

### **National Indigenous Law and Justice Framework**

*See page 62 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

34. On 6 November 2009, the Australian Government and state and territory governments endorsed the *National Indigenous Law and Justice Framework*.<sup>29</sup> Despite a public nomination process in December 2008, no appointments have been made to the National Indigenous Law and Justice Advisory Body.

### **Additional recommendations proposed for Concluding Comments**

- ⇒ THAT the Australian Government be commended for increasing funding of Indigenous legal services and be called on to further increase the ongoing funding to Aboriginal and Torres Strait Islander women's legal services to better meet the legal needs of Aboriginal and Torres Strait Islander women who are chronically disadvantaged in their access to justice.
- ⇒ THAT the Australian Government implement the measures outlined in the *National Indigenous Law and Justice Framework* to address the overrepresentation of Aboriginal and Torres Strait Islander people, including women and young people, in the criminal justice system.
- ⇒ THAT the Australian Government take immediate steps to appoint a National Indigenous Law and Justice Advisory Body that includes adequate representation of Aboriginal and Torres Strait Islander women.

## **Challenges**

### **Safety of women and children after separation**

35. In 2006 amendments to the *Family Law Act 1975* were made to help separated parents make arrangements for the care of their children more cooperatively than in the past. However three reports into the 2006 reforms, which the Australian Government released on 28 January 2010, show that the Australian family law system is failing to respond effectively to issues of family violence and keep women and children safe.<sup>30</sup> See paragraph 33 of the *Australian NGO Report Update* for more information about the findings of the reports. The Australian Government is currently considering its response to the three reports.

36. The reports are disappointing as they do not adequately consider issues faced by Aboriginal and Torres Strait Islander women and their children.

<sup>28</sup> Special Rapporteur's Report, as above, [104].

<sup>29</sup> Robert McClelland, Attorney-General and Brendan O'Connor, Minister for Home Affairs, Joint Media Release, *Tackling Indigenous Law and Justice Issues*, 6 November 2009, available at [http://www.attorneygeneral.gov.au/www/ministers/mccllelland.nsf/Page/MediaReleases\\_2009\\_FourthQuarter\\_6November2009-TacklingIndigenousLawandJusticeIssues](http://www.attorneygeneral.gov.au/www/ministers/mccllelland.nsf/Page/MediaReleases_2009_FourthQuarter_6November2009-TacklingIndigenousLawandJusticeIssues)

<sup>30</sup> Australian Institute of Family Studies, *Evaluation of the 2006 Family Law Reforms*, (2009); Professor Richard Chisholm, *Family Courts Violence Review* (2009); and the Family Law Council, *Improving Responses to Family Violence in the Family Law System* (2009).

*Additional recommendations proposed for Concluding Comments:*

⇒ THAT the Australian Government amend the *Family Law Act* to better protect the safety of women and children, taking into account the specific needs of Aboriginal and Torres Strait Islander women and children.

**Access to Justice – Release of Senate Access to Justice Report**

37. On 8 December 2009, the Senate Legal and Constitutional Affairs Committee' Access to Justice Report (**Senate Access to Justice Report**) was released.<sup>31</sup> The report recognised the chronic disadvantage faced by Aboriginal and Torres Strait Islander women (and children) in their ability to access justice, including justice in relation to domestic/family violence and sexual assault.<sup>32</sup>
38. The report recommended that the Australian, state and territory governments jointly fund a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Aboriginal and Torres Strait Islander women's needs.<sup>33</sup> The Committee also expressed hope that Aboriginal and Torres Strait Islander women are properly represented on the National Indigenous Law and Justice Advisory Body (discussed at paragraph 34 above) and, in that capacity, will be able to have a greater impact on Aboriginal and Torres Strait Islander women's law and social justice policies, including the development of a strategic approach to such issues.<sup>34</sup>

*Additional recommendations proposed for Concluding Comments*

⇒ THAT the Australian Government implement the recommendation of the 2009 *Senate Inquiry into Access to Justice* to conduct a comprehensive national survey of demand and unmet need for legal assistance services in Aboriginal and Torres Strait Islander communities, with particular identification of rural, regional and remote communities and Aboriginal and Torres Strait Islander women's needs.

**Violence against women**

**National Plan to Reduce Violence against Women and Children – Government response**

*See page 68 of the Aboriginal and Torres Strait Islander Women's Parallel NGO Report.*

39. Despite agreeing to immediately progress most of the 20 priority recommendations in the National Plan to Reduce Violence Against Women and Children (**National Plan**), the Australian Government has not implemented the remaining recommendations in the National Plan.

**Comments by the Special Rapporteur on Indigenous Rights about violence against Aboriginal and Torres Strait Islander women**

40. The Special Rapporteur said:

The Special Rapporteur commends the Government for attaching urgency and priority to the issue of protecting vulnerable groups and abating violence against women and children. However, efforts

<sup>31</sup> Available at [http://www.apf.gov.au/SENATE/COMMITTEE/legcon\\_ctte/access\\_to\\_justice/report/index.htm](http://www.apf.gov.au/SENATE/COMMITTEE/legcon_ctte/access_to_justice/report/index.htm)

<sup>32</sup> Senate Access to Justice Report, as above, [8.87].

<sup>33</sup> Senate Access to Justice Report, as above, Recommendation 1 at [2.35]

<sup>34</sup> Senate Access to Justice Report, as above, [8.131].

should be made to intensify consultations with indigenous women at the community level to amplify and adapt services and solutions to violence and other problems in their own communities. Special emphasis should be placed on providing access to culturally appropriate, community-based legal and support services to victims of domestic violence in remote areas.<sup>35</sup>

### *Additional recommendations proposed for Concluding Comments*

⇒ THAT the Australian Government fund Aboriginal and Torres Strait Islander women's legal services across Australia, including in rural and remote areas, to assist victims of sexual assault and family violence.

### ***ALRC/NSW LRC Family Violence Inquiry - Aboriginal and Torres Strait Islander women's perspective***

41. On 29 April 2010, the Australian Law Reform Commission (**ALRC**) and the NSW Law Reform Commission (**NSWLRC**) released a Consultation Paper for the joint Inquiry into family violence laws, called *Family Violence: Improving Legal Frameworks (Consultation Paper)*.<sup>36</sup> The Commissions' Inquiry is focusing on the complex interrelationship of federal and state/territory laws and legal processes and considering improvements that could be made to protect women and children from family violence. The Inquiry report will build on the recently released family violence reports discussed at paragraph 35 and is due to be released on 31 July 2010.
42. This was a lengthy (at well over 1000 pages), complex Consultation Paper where the aspects of family violence that affect Aboriginal and Torres Strait Islander women were mainstreamed throughout the paper without adequate referencing or indexing, making it difficult for Aboriginal and Torres Strait Islander women to engage with this important Inquiry and to be properly consulted about the family violence issues the Inquiry is examining.

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<sup>35</sup> Special Rapporteur's Report, as above, [101].

<sup>36</sup> Available at [http://www.alrc.gov.au/inquiries/current/family-violence/CP1/zz\\_whole\\_consult\\_paper.pdf](http://www.alrc.gov.au/inquiries/current/family-violence/CP1/zz_whole_consult_paper.pdf)