



Australian
Human Rights
Commission

everyone, everywhere, everyday

Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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Independent Report to the Committee on the
Elimination of Discrimination against Women

5 July 2010

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1 Introduction

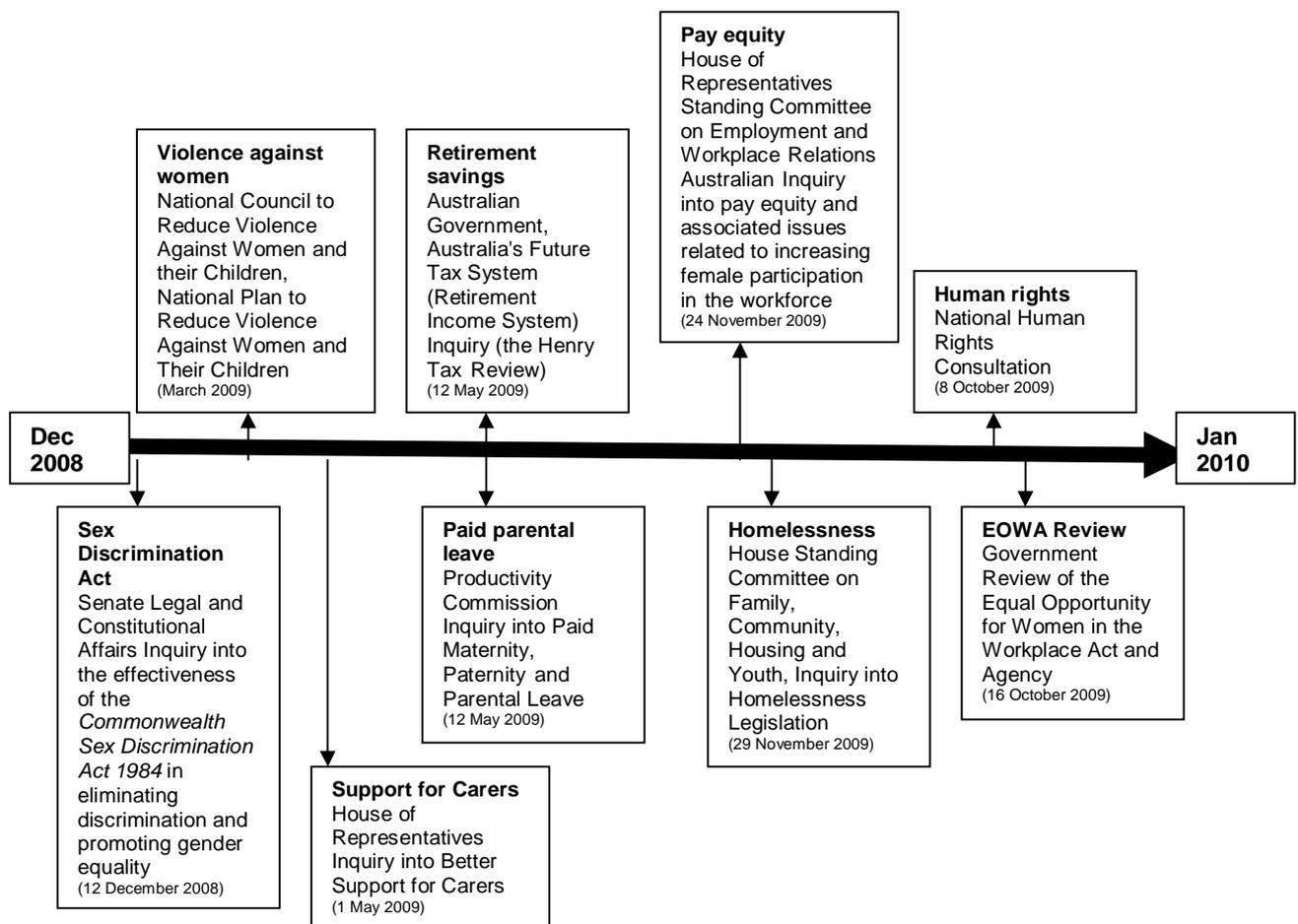
1. The Australian Human Rights Commission (the Commission)¹ welcomes the opportunity to submit this Independent Report on Australia's implementation of the Convention on All Forms of Discrimination against Women (CEDAW) to the Committee on the Elimination of Discrimination against Women (the Committee).
2. The Commission is Australia's national human rights institution. The Commission is compliant with the *Paris Principles*,² and a member of the International Coordinating Committee of National Human Rights Institutions³ and the Asia Pacific Forum of National Human Rights Institutions.⁴
3. The Commission administers the *Sex Discrimination Act 1984* (Cth) (SDA). The SDA was enacted in order to give effect to obligations of Australia under CEDAW. The SDA makes unlawful discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy in many areas of public life including employment, education and the provision of goods, services or facilities. The SDA makes unlawful discrimination on the ground of family responsibilities only in dismissal from employment. The SDA also aims to promote recognition and acceptance within the community of the principle of the equality of men and women.⁵
4. The SDA creates the office of the Sex Discrimination Commissioner.⁶ The Sex Discrimination Commissioner is a member of the Commission together with the President of the Commission, the Aboriginal and Torres Strait Islander Commissioner, Disability Discrimination Commissioner, Human Rights Commissioner and Race Discrimination Commissioner. The Sex Discrimination Commissioner leads the work of the Commission to promote gender equality in Australia.
5. In 2007, the Sex Discrimination Commissioner conducted a national *Listening Tour* in Australia, which involved extensive consultations with women and men across the country. The key finding of the *Listening Tour* was that gender equality matters to both women and men but that progress towards this goal in Australia had stalled.⁷
6. All of the material included in this document has been previously brought to the attention of the Australian Government through a range of Commission publications and submissions.
7. The recommendations in this Independent Report are also contained in the Commission's *Gender Equality Blueprint 2010* launched in June 2010. The Blueprint is a synthesis of the Commission's key outstanding recommendations for immediate reform in Australia to promote gender equality, arising out of its submissions and reports since 2007.
8. The Shadow Report prepared by Women's Non Government Organisations and submitted to the Committee in 2009 provides a comprehensive overview

of positive developments and current challenges referenced to every article of CEDAW.

9. The Australian Human Rights Commission's Report does not seek to replicate that information but rather to update the Committee on major developments in key areas since July 2009, drawing on the Commission's domestic policy submissions and advocacy.

2 Overview

10. Since 2007, there have been some significant positive developments in promoting gender equality in Australia and fulfilling Australia's international obligations under CEDAW. These development are set out in this Report.
11. A significant number of these developments have arisen out of important national reviews which have considered, at least in part, the state of gender equality in Australia over the last 18 months.



12. However, there remain gaps in substantive equality between women and men. Gender inequality continues to be a significant problem in Australia:

- Australia is ranked 1st on women's educational attainment but, between 2008 and 2009, Australia's international ranking for women's participation in the workforce dropped from 40th to 50th position.⁸
 - Women in Australia currently earn approximately 82 cents in the male dollar (full-time adult ordinary time earnings) and the gender gap in pay has widened over the last four years.⁹
 - One in three Australian women experiences physical violence in their lifetime.¹⁰
 - Nearly one in five Australian women has experienced sexual assault since the age of 15¹¹
 - Women chair only two per cent of ASX200 companies (four Boards) and hold only 8.3% of Board Directorships.¹²
 - Women spend almost three times as many hours per week looking after children as men.¹³
 - Average superannuation payouts for women are less than half that received by men – \$63,000 compared with \$136,000.¹⁴
 - Women make up 73% of Single Age Pension recipients.¹⁵
13. There are a number of areas in which significant further action is required to achieve substantive equality between women and men.
 14. This Independent Report addresses five key areas of reform, relevant to Australia's international obligations under CEDAW. This Report is not a comprehensive review of all aspects of inequality. It highlights five areas in which the Commission has undertaken significant policy and advocacy at the national level.
 15. The Report highlights key positive developments in each of these areas, and presents recommendations for addressing current challenges.

3 Balancing paid work and family and caring responsibilities

3.1 Improving the Paid Parental Leave Scheme (Art 11(2)(b): Paid maternity leave)

16. Australia has been one of only two OECD countries in which there is not a statutory right to paid maternity leave.
17. Australia has been criticised for not having this basic right in place, including by the Committee.¹⁶

Positive Developments

18. On 17 June 2010, the Australian Parliament passed the *Paid Parental Leave Act 2010* (Cth) which will deliver Australia's first statutory Paid Parental Leave scheme on 1 January 2011. This is an historic victory for all women and parents in Australia. The Australian Government is to be congratulated for continuing to pursue this reform particularly during the global economic slowdown.
19. The scheme will provide 18 weeks leave paid to the primary carer at the federal minimum wage. The scheme will provide a significant step towards reducing the workplace disadvantage that women experience following the birth of a child and enable parents to stay at home to care for their baby during the vital early stages.
20. The *Paid Parental Leave Act 2010* (Cth) also includes provision for a review of the scheme two years after its commencement.¹⁷

Current Challenges

21. There are a number of gaps in the current Paid Parental Leave scheme that should be addressed.
22. The scheme does not include superannuation, which impacts on the major gender gap in retirement savings and economic security between older women and men.
23. There is also no specific paid leave for fathers and other supporting parents. Australian men and women overwhelmingly believe (90%) that men should be as involved in parenting as women,¹⁸ and that equal participation in caring work leads to greater financial and gender equality over the life course.
24. Improving the scheme will better protect women's financial security and provide a greater opportunity for fathers and other supporting partners to bond with their babies and share in their care.

Recommendation One for Concluding Comments

- That the Australian Government be congratulated for introducing the first statutory Paid Parental Leave scheme to commence on 1 January 2011.
- That the Australian Government ensure the legislated independent review of the new Paid Parental Leave Act 2010 gives particular consideration to providing superannuation on paid leave and a minimum of two weeks paid leave for fathers and other supporting parents.
- That the Australian Government also give consideration to extending the scheme over time to provide a full year of paid parental leave that can be shared between parents including a minimum of four weeks paid leave for fathers and supporting parents, available on a 'use it or lose it' basis as well as increasing the level of payment to at least two thirds of income.

3.2 Making flexible work an accepted part of workplace culture (Art 11: Work)

25. One of the most common reasons that women and a growing number of men struggle to stay in paid work is because of their responsibility for the care of children and other loved ones.
26. In many workplaces caring is still seen as an individual choice. Workplaces do not adequately support employees who have caring roles. Many workers are not able to obtain the flexible work arrangements they need. When it gets too hard to juggle their various responsibilities, some have no option but to resign.
27. There has been a lot of talk about the importance of 'flexible work' and getting the 'work-life balance' right.
28. However, the simple reality is that quality flexible working arrangements are still uncommon in Australian workplaces. Where flexible work policies are available, unsupportive workplace cultures mean that many workers – and men in particular – report being reluctant to use them. Men report concerns about money, adverse effects on careers, fears about job security, negative attitudes of supervisors and lack of awareness about leave as reasons for their low take-up.¹⁹ While women report having better access to family friendly employment conditions, using these often comes at the expense of job quality, pay, satisfaction with hours worked and career progression.²⁰
29. To be effective, flexible work arrangements need to be an accepted part of all Australian workplaces. They need to be available to both men and women and cover all forms of caring responsibilities, not just young children, in order to support the more equal sharing of paid work and family and caring responsibilities.

Positive developments

30. The National Employment Standard (NES) on the right to request a flexible work arrangement commenced on 1 January 2010 under the *Fair Work Act 2009* (Cth). The NES will give parents covered by Australia's national industrial relations laws the right to request a flexible work arrangement where they have children below school age or a child under 18 years old with a disability. This is a welcome recognition of the reality that many workers need to balance paid employment with their family and caring responsibilities.
31. On 24 June 2010, the Australian Government introduced the Sex Discrimination Amendment Bill 2010 into the Australian Parliament. If passed, this Bill will extend the protection from discrimination on the grounds of family responsibilities to both female and male workers who are caring for a child or immediate family member.²¹

Challenges

32. The NES in its current form does not extend to the full range of caring responsibilities that workers often have to meet. The right to request flexible work is currently restricted to carers of a child below school age or a child under 18 years old with a disability.
33. Carers of older children, elderly parents or a family member with a disability may also need flexible work arrangements to meet their caring responsibilities and remain in paid employment.
34. The *Sex Discrimination Act 1984* (Cth) in its current form also provides only limited protection from discrimination on the grounds of family and caring responsibilities. Protection is confined to direct discrimination upon dismissal from employment.²²
35. The Sex Discrimination Amendment Bill 2010 has not yet been enacted, and is not therefore part of the law of Australia.

Recommendation Two for Concluding Comments

- That the Australian Government be commended for including the right to request flexible working arrangements within the National Employment Standards.
- That the Australian Government amend both the National Employment Standard and the *Sex Discrimination Act 1984* to provide comprehensive protection from discrimination on the grounds of all forms of family and carer responsibilities to both women and men in all areas of employment and place a positive duty on employers to reasonably accommodate a worker's family and carer responsibilities, including through the provision of flexible work arrangements.

3.3 Affordable, accessible, quality early childhood education and care and school age care (Art 11(2)(c): Childcare)

36. Many parents who want to stay in paid work after they have children rely on formal childcare. Parents use a range of services to assist them balance their paid work with their responsibilities for their children – childcare for infants, care and education for preschool aged children and outside school hours care for school aged children. These services also support children's social, cognitive, physical and emotional development.
37. However, parents continue to experience difficulty in finding appropriate care for infants, preschool education and care for school aged children before and after school and during school holidays.²³
38. The lack of appropriate and affordable childcare has been identified as one of the main barriers to women returning to work after having children.²⁴
39. Some parents report that care fees are prohibitive, sometimes costing them more than they earn. Others struggle to find a place for their child, even when they can afford to pay. For parents using childcare and after school hours care, getting to these centres on time can be stressful and costly. Many parents still do the 'double drop-off', dropping one child at childcare and another at school. To complicate matters, the hours when care is available can often be incompatible with paid work hours, particularly shift work.
40. Some parents also question the quality of care their children receive or the age appropriateness of activities and care.
41. Increasingly, grandparents are being called on by their adult children to 'fill the gap' and provide this care. As a result grandparents may have to reduce, or even give up, their own paid work to provide care for their grandchildren. Women are twice as likely to undertake informal childcare as men.²⁵

Positive Developments

42. In 2008, Australian Governments made a commitment to ensure that by 2013 every child will have access to 15 hours a week, 40 weeks a year in a preschool program in the 12 months prior to full-time schooling.²⁶
43. In 2009, Australian Governments agreed to a new National Quality Framework to improve early childhood education and care in Australia. The agreement includes a commitment to establish a new national body jointly governed by the Commonwealth and the state and territories.²⁷
44. In addition, the Australian Government has provided a significant increase in funding towards child care services and improvements.²⁸

Challenges

45. However, Australia has a significant challenge ahead in building an early childhood education and care and school age care system as a major piece of essential national social infrastructure.
46. In 2008, the United Nation's Children's Fund ranked Australia's childcare system as the third worst in 25 OECD countries.²⁹ It also urged Australia to reduce its reliance on the corporate sector for the provision of child care services.
47. The Senate Committee Inquiry into the Provision of Childcare also found that "the need for quality childcare for children of all ages is beyond question and governments have a responsibility to ensure that it is regulated and affordable."³⁰ It is essential that national structures, systems and resources are put in place to progressively build a system of universal childhood education and care.

Recommendation Three for Concluding Comments

- That the Australian Government establish a strong national body to oversee the ongoing development and improvement of early childhood education and care in Australia. The national body must be adequately funded to drive national reform in a transparent manner, with a lead role in policy and planning, operating as a single point of national accountability.
- That the Australian Government ensure improvements under the National Quality Framework do not lead to increases in costs to individual parents and families.
- That the Australian Government ensure services deliver equal outcomes to all children, including children in regional and remote areas, Indigenous children, children from culturally and linguistically diverse communities and children with specific needs.
- That the Australian Government provide greater options for families for non-standard hours child care services.
- That the Australian Government introduce a scheme of financial incentives or grants for primary and secondary schools, community based organisations and children's services to introduce innovative and age appropriate activities outside school hours and in school holidays.
- That the Australian Government promote greater accessibility and coordination between all services for children, including schools, recreation and sport programs and health-related services and programs.

4 Ensuring women's lifetime economic security

4.1 Pay equity

(Art 11(1)(d): Equal pay)

48. Women in Australia currently earn approximately 82 cents in the male dollar (full-time adult ordinary time earnings) and the gender gap in pay has widened over the last four years.³¹
49. The gender pay gap is even greater when women's part-time and casual earnings are considered, with women earning just two thirds the amount men earn.³²
50. Women are more likely to work under minimum employment conditions and be engaged in low-paid, casual and part-time work.³³
51. Australian women are over-represented in low-paid industries, with high levels of part-time work in retail, hospitality and personal services sectors.³⁴
52. The Australian workforce is highly segregated by gender and female-dominated industries have been historically undervalued.³⁵ For example, industries such as aged care, child care, health and community services are all female-dominated and generally lower paid compared to male-dominated industries such as engineering, mining and finance.³⁶
53. The gender pay gap is not limited to female-dominated industries. It is also particularly pronounced in ASX200 companies. Among the key management personnel in these companies for whom remuneration data is available, the pay gap is 28.3% – more than 10% higher than the current national average gender pay gap.³⁷

Positive developments

54. The Australian Government introduced new provisions for achieving pay equity in the *Fair Work Act 2009* (Cth). The new provisions expand the definition of the test associated with challenging pay rates on the grounds of the gender pay gap by introducing the requirement that equal pay must be provided for work of equal or comparable value.³⁸
55. The Australian Government is also to be congratulated for referring to the House of Representatives Standing Committee on Employment and Workplace Relations its Inquiry into Pay Equity and associated issues related to increasing female participation in the workforce. The Committee released its comprehensive report on 23 November 2009.³⁹
56. In addition, the Australian Government is to be congratulated for supporting the test case under the *Fair Work Act 2009* (Cth) under the new equal remuneration laws led by the Australian Services Union. The test case seeks a review of pay rates under the Social and Community Services Award and

will affect approximately 200,000 community workers. The Commission has intervened in this case.

Challenges

57. The Australian Government has yet to respond to the Report of the House of Representatives Standing Committee on Employment and Workplace Relations into Pay Equity.
58. The response to any outcome of the test case by funding bodies of affected community services, including by the Australian Government, is not yet known.

Recommendation Four for Concluding Observations

- That the Australian Government be congratulated for introducing new provisions for achieving pay equity in the *Fair Work Act 2009* (Cth).
- That the Australian Government provide the Equal Opportunity for Women in the Workplace Agency, the Sex Discrimination Commissioner, the Australian Human Rights Commission and Fair Work Australia with the mandate and resources to develop a National Pay Equity Strategy.
- That the Australian Government amend the Equal Opportunity for Women in the Workplace Act to make pay equity a specific 'employment matter.'
- That the Australian Government establish a specialist unit to develop and monitor pay equity mechanisms within the new wage setting body of Fair Work Australia.
- That the Australian Government put in place measures to promote greater transparency in relation to pay rates, including in individual contracts.
- That the Australian Government provide funding required to ensure that any decision of Fair Work Australia arising from the Australian Services Union's application for an Equal Remuneration Order on behalf of Social and Community Service workers can be implemented without job losses or reduction of services.

4.2 Closing the gender gap in retirement incomes, superannuation and valuing unpaid work (Art 11: Work)

59. There is a major gap between the financial security of Australian men and women in later life and women face a much greater risk of living in poverty.
60. Current average superannuation payouts for women are less than half that received by men – \$63,000 compared with \$136,000.⁴⁰

61. Of all household types in Australia, elderly single women are at the greatest risk of persistent poverty, with more than half of elderly single women living in poverty.⁴¹
62. Many women are reliant on the Age Pension due to minimal retirement savings – 73% of single Age Pensioners are women⁴² and 58.3% of all Age Pensioners are women.⁴³
63. Australia's retirement income system is based on compulsory savings enforced through the superannuation guarantee and voluntary savings (both through superannuation and other sources). The government-provided Age Pension supplements this income.
64. Superannuation savings are directly linked to paid work. This means women who take time out of paid work to care for children or other family members are penalised in retirement savings. Women do two thirds of the unpaid caring and domestic work in Australian households⁴⁴ and spend almost three times as many hours each week looking after children as men.⁴⁵

Positive developments

65. The Australian Government has conducted the *Henry Tax Review*⁴⁶ and the *Cooper Review* into superannuation in Australia.⁴⁷
66. The Australian Government is now taking action to increase retirement savings by raising the superannuation guarantee to 12 per cent by 2019/20. This will increase the retirement savings of many people in the paid workforce.⁴⁸
67. The Australian Government has also committed to making a superannuation contribution of up to \$500 annually for people on low incomes.⁴⁹

Challenges

68. Reforms are needed to the whole retirement income system to ensure women, who receive lower salaries in paid work and perform the majority of unpaid work in the home, are not left in poverty in their retirement.
69. In particular, the retirement income system needs to include mechanisms that provide a financial reward for unpaid caring work carried out during a person's lifetime.
70. The reviews conducted by the Australian Government have so far failed to grapple with the gender inequality inherent in Australia's retirement income system. While the recently announced changes to the superannuation system may have some benefits for people on low incomes, the persistent gender pay gap and the continuing 'broken' work patterns of women mean their retirement savings will continue to lag behind those of men.

Recommendation Five for Concluding Observations

- That the Australian Government extend the superannuation co-contribution scheme. This scheme has particularly benefited women who are more likely to be low income earners.⁵⁰
- That the Australian Government undertake a gendered analysis of the findings of the *Henry Review* to ensure that changes to the tax system help close the gap in economic security between men and women.
- That the Australian Government support an independent inquiry into recognising unpaid caring work within Australia's superannuation and pension schemes.

4.3 Providing safe, secure and affordable housing (Art 13: Economic and social rights)

71. Australia is facing a national housing crisis with not enough supply to meet the demand of a growing population.
72. The rising cost of housing means that women, with less financial resources at their disposal than men, are particularly vulnerable to living in insecure or inadequate housing.
73. Women can also experience periods of homelessness, especially following domestic or family violence or the breakdown of a relationship.

Positive developments

74. The Australian Government has taken a number of steps to reduce homelessness and to expand the availability of low cost and social housing in Australia.
75. In particular, the Commission welcomes the establishment of the National Rental Affordability Scheme,⁵¹ and the substantial increase in funding for low cost housing.⁵²
76. The Commission also welcomes the Homelessness White Paper (The Road Home),⁵³ the commitment to achieving targets in the reduction of homelessness to 2020 and the significant increase in funding to homelessness services.⁵⁴
77. The Australian Government is also to be congratulated for initiating the House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into National Homelessness Legislation. The Commission particularly welcomes the Report of that Inquiry in November 2009, which recommended that:

- National homelessness legislation should specify the right to the progressive realisation of adequate housing and provide for independent monitoring of progress against this international human rights standard⁵⁵
- Data collection mechanisms should allow monitoring of specified vulnerable and marginalised population groups⁵⁶
- Tenancy and public space laws should be audited to ensure compliance with anti-discrimination and human rights obligations⁵⁷

Challenges

78. Australia continues to face a national crisis in access to affordable housing.⁵⁸
79. There is yet to be a long term assessment of housing need which has led to a national framework for ensuring that current and future adequate housing needs will be addressed.
80. Women and their children continue to be particularly affected by the affordable housing crisis, due to the major gap in overall economic security across the life-cycle, and to women's experience of gender-based violence which leads to housing vulnerability.
81. Women account for close to two thirds of people using Australia's homelessness assistance services.⁵⁹ Young women (15–19 years) are the most likely population group to use a homeless assistance service with one in every 50 women in this age bracket accessing support in a 12 month period.⁶⁰
82. Retired single women are almost twice as likely as single men to sell their house to move to lower cost accommodation because of their financial circumstances in retirement.⁶¹
83. The mechanisms for coordinating government action associated with the National Plan to reduce Violence against Women have yet to be articulated.

Recommendation Six for Concluding Observations

- That the Australian Government be commended for its commitments to reduce homelessness and to expand the availability of low cost and social housing in Australia.
- That the Australian Government develop and implement a National Housing Strategy with the aim of delivering equal outcomes for women and men.
- That the Australian Government ensure national responses to homelessness and affordable housing are disaggregated by gender and other relevant characteristics to monitor equality of outcomes.
- That the Australian Government ensure all government funded research, reporting, monitoring and evaluation frameworks should include disaggregated data collection and analysis of the outcomes being achieved for vulnerable groups, including women and their children.
- That the Australian Government integrate national initiatives to eliminate violence against women, including legal support services with national housing and homelessness initiatives.
- That the Australian Government undertake a review of tenancy laws to better protect people from being evicted into homelessness.

5 Promoting women in leadership

5.1 Strengthening representation at decision-making levels (Art 4: Temporary Special Measures; Art 7: Public participation)

84. Despite making up 45% of Australia's total workforce, women remain grossly under-represented in leadership and management positions in virtually all sectors.
85. The number of women in leadership positions in the public and private sector is not representative of women's interest or ability. Furthermore, increasing the representation of women at decision-making levels would help challenge and change the gendered culture of workplaces and institutions.

Positive Developments

86. New reporting requirements introduced by the Australian Securities Exchange Governance Council will require all listed companies to set targets for increasing the number of women on their Boards and at senior executive level.
87. These new reporting requirements are a welcome call to action to business to address the low representation of women at decision-making levels.
88. Most state and territory governments have already put in place gender equality targets for government-appointed Boards and Committees and these have had a dramatic impact on the representation of women on these bodies.

Challenges

89. The Australian Government has not adopted quotas and targets to increase the number of women in political and public life and particularly to ensure the equal representation of women in all publicly appointed bodies.
90. It is time for the Australian Government to follow suit and take concrete steps to ensure greater gender equality in Australian Government appointments, including on Boards and Committees and within the Australian Public Service as a whole.

Recommendation Seven for Concluding Observations

- That the Australian Government set a minimum target of 40% representation of each gender on all Australian Government Boards within three years. These targets should be publicly announced and progress should be reported annually.
- That the Australian Government set a minimum gender equality target in the Senior Executive Service in the Australian Public Service, publicly announce the target and progress should be reported annually.
- That the Australian Government require all publicly listed companies providing goods or services to the Australian Government to be certified by the Equal Opportunity in the Workplace Agency.
- That the Australian Government set a target of 40% representation of each gender on all publically listed Boards in Australia, to be achieved over five years. If progress is not made, the Australian Government should consider legislating to require publicly listed companies and other large employers to achieve a mandatory gender diversity quota of a minimum of 40% of both genders within a specified timeframe, failing which penalties would be imposed.

5.2 Lifting the voices of women in civil society (Article 7(b)(c), Article 8: Participation in formulation of government policy, non government organisations and representation)

91. Women also play crucial leadership roles in civil society, developing initiatives to improve the health and well-being of their communities. Women leaders ensure that women are able to have a voice in the formation and implementation of legislation, policies and services which affect their lives.
92. It is crucial that women leaders have the opportunity to share their skills, experience and insights with others in Australia and abroad. It can be particularly difficult for women from different ethnic, religious and cultural backgrounds to participate in meetings and fora at a national and international level.

Positive Developments

93. In March 2010, the Australian Government funded six new National Women's Alliances to improve dialogue between women and the Australian Government on a range of policy issues including violence against women, issues facing Aboriginal and Torres Strait Islander women, women in rural region settings and immigrant and refugee women. The Australian Government has also announced specific funding for the Alliance and UNIFEM Australia to coordinate, promote and hold a range of events to mark the centenary of International Women's Day.

94. The Australian Government announced grants to 117 organisations under the 2010-11 *Sport Leadership Grants and Scholarships for Women* program, which provides grants and scholarships in the areas of coaching, officiating, governance, management, administration, communications and the media.
95. Nongovernment organisations have coordinated and produced a detailed Shadow Report to the Australian Government's sixth and seventh reports and continue to participate actively in policy formation despite limited resources.
96. The Australian Government has funded NGO delegates, including specific positions for Aboriginal and Torres Strait Islander Women on the Australian Government Delegation to the UN Commission on the Status of Women.

Challenges

97. Non government women's services and organisations are not adequately funded to provide policy advice to government.

Recommendation Eight for Concluding Observations

- That the Australian Government be congratulated for funding women's nongovernment organisations to provide a Shadow Report to the Committee and commended for funding six women's alliances to provide expert policy advice to Government.
- That the Australian Government specifically and adequately support women's organisations and representatives to participate fully in local, national, regional and international policy and decision-making processes.
- That the Australian Government ensure policy development includes meaningful and ongoing consultation with grassroots communities, women's organisations and women's alliances.
- That the Australian Government ensure all Australian delegations to regional or international intergovernmental bodies reflect the diversity of women in Australia.

6 Preventing violence against women and sexual harassment

6.1 Putting an end to violence against women

98. Many women in Australia continue to experience violence as an everyday reality. Almost every week in Australia, one woman is killed by her current or former partner, often after a history of domestic violence.⁶² Intimate partner homicides account for just over one-fifth of all homicides.⁶³ Research from the State of Victoria confirms that domestic violence is the leading contributor to death, disability and illness of women in Victoria under the age of 45.⁶⁴

Positive Developments

99. It is commendable that the Australian Government has taken a 'zero tolerance' approach to violence against women and has committed to a National Plan to address the problem.
100. The *National Plan to Reduce Violence against Women and their Children* and its first three-year *Action Plan* are currently being developed by the Council of Australian Governments. The Plan when finalised, will be the first national plan for an Australian Government to address violence against women, and will be a significant step forward in addressing this important area of concern.

Challenges

101. In order to be effective, a National Plan must create national structures which ensure cooperation and consistency across all Australian jurisdictions.⁶⁵ International research and experience suggests a national-level body, with a strong mandate, should drive the implementation and further development of the National Plan.⁶⁶
102. Services established to respond to the needs of women experiencing violence, including legal services, must be adequately funded and properly supported.

Recommendation Nine for Concluding Observations

- That the Australian Government be congratulated for initiating a new national approach to violence against women.
- That the Australian Government ensure both national structures and adequate Commonwealth funding are put in place to support coordinated and strategic implementation of the National Plan to Reduce Violence Against Women across jurisdictions and sectors.
- That the Australian Government nominate and fund a suitable independent statutory office to monitor and inform the development of the National Plan. Monitoring should contribute to the development of a national research and education agenda and promote best practices.
- That the Australian Government ensure services responding to the needs of women and girls who have experienced violence are adequately funded as an urgent priority.
- That the Australian Government adequately resource independent advocacy organisations and representatives to contribute to the development and evaluation of the National Plan.
- 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.

6.2 Preventing sexual harassment (Art 11: Work)

103. Sexual harassment remains a chronic problem in Australian workplaces, despite being outlawed for over 25 years.
104. Every year, sexual harassment is one of the most common grounds of complaint under the SDA.⁶⁷
105. The proliferation of new technologies – such as mobile phones and social networking websites – is also creating new mediums where sexual harassment can occur.

Positive developments

106. The Australian Government has accepted a number of the Senate Committee's recommendations from the *Inquiry into the Effectiveness of the Sex Discrimination Act* relating to sexual harassment. The proposed changes to the SDA will greatly improve the protection available for women who experience sexual harassment at work or in schools.

107. The Australian Government has also agreed to consider amending the SDA to include a general prohibition against sexual harassment in any area of public life, as recommended by the Senate Committee's *Inquiry into the Effectiveness of the Sex Discrimination Act* and as part of the proposed consolidation of federal discrimination laws.

Challenges

108. The proposed changes to the SDA have not yet been passed by the Australian Parliament and therefore are not part of Australian law.

109. There is a need for a coordinated and adequately funded strategy to drive down the incidence of sexual harassment involving key government agencies including the Commission, the Equal Opportunity for Women in the Workplace Agency, Fair Work Australia, employers, unions and civil society groups.

Recommendation Ten for Concluding Observations

- That the Australian Government amend the SDA to provide greater protection from sexual harassment for students and workers, as proposed by the Australian Government in its response to the review conducted by the Senate Committee.
- That the Australian Government strengthen the powers of the Sex Discrimination Commissioner by inserting into the SDA a function for the Commissioner to initiate investigations within Australian workplaces without requiring an individual complaint, in order to drive down the incidence of sexual harassment.
- That the Australian Government develop and implement a national Sexual Harassment Prevention Strategy to assist all employers and workers understand their rights and responsibilities in relation to sexual harassment. The strategy should focus on prevention and education with key roles for the Equal Opportunity in the Workplace Agency, the Sex Discrimination Commissioner/Australian Human Rights Commission and Fair Work Australia.

7 Strengthening gender equality laws, agencies and monitoring

7.1 Building gender equality machinery

(Art 2: Obligations to eliminate discrimination; Art 3: Advancement of women)

110. Government systems and agencies are most effective in promoting gender equality when they are located at a high level within the national decision-making hierarchy to influence government policy.
111. Gender equality machinery must have a clear mandate and functional responsibility and be linked to civil society groups that support the advancement of women's rights. National machinery must have adequate human and financial resources and be accountable to the public.⁶⁸

Positive developments

112. Since 2007, the Australian Government has initiated a number of important reviews that have considered how to strengthen Australia's gender equality machinery. In particular, the Government has initiated reviews into the SDA the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* and an inquiry into closing the gender pay gap.

Challenges

113. At present, responsibility for gender equality is shared between a number of Government Agencies and there are no formal agreements in place to ensure a consistent implementation of CEDAW. The laws that underpin the various agencies are inconsistent and may lead to confusion, increased enforcement costs and reduced impact.
114. There is a need for reform to provide greater clarity around roles and responsibilities and to coordinate action towards gender equality.

Recommendation Eleven for Concluding Observations

- That the Australian Government improve the quality of government decision-making and policy-making relating to women by ensuring that the federal Office for Women is adequately funded and has influence at the highest level of government.
- That the Australian Government strengthen the independent agencies that contribute to gender equality, including the Equal Opportunity for Women in the Workplace Agency and the Australian Human Rights Commission.
- That the Australian Government promote concrete measures such as setting targets to increase the proportion of women running for election and entering both houses of federal Parliament.

7.2 Improving gender equality legislation

(Art 2: Obligations to eliminate discrimination against women; Art 3: Advancement of Women)

7.2.1 Sex Discrimination Act 1984 (Cth)

115. The operation of the SDA over the last 25 years shows that there are some serious limitations with the current form and content of Australia's gender equality legislation. This was confirmed when the Senate Legal and Constitutional Committee reviewed the SDA in 2009. Evidence presented to the Committee suggested that while the SDA has had an impact on the most overt forms of sex discrimination, it has been less successful in addressing systemic discrimination.
116. It is also widely acknowledged that the SDA does not fully implement Australia's international legal obligations, particularly under CEDAW.

Positive Developments

117. In its report of December 2009, the Committee made a suite of recommendations designed to ensure the SDA can continue to progress gender equality in Australia. These recommendations were also endorsed by the House of Representatives Inquiry into Pay Equity in 2009.
118. The Australian Government responded to the SDA review in April 2010. The Government's proposed immediate action would:
- ensure that the protection from discrimination provided by the SDA applies equally to women and men
 - establish breastfeeding as a separate ground of discrimination

- provide greater protection from sexual harassment for students and workers
 - extend protection from discrimination on the grounds of family and caring responsibilities to both women and men in all areas of employment.
119. On 24 June 2009, the Australian Government introduced the Sex Discrimination Amendment Bill 2010 (Cth) into the Australia Parliament to give effect to this first stage of reform.
120. The Australian Government has stated that it will give further consideration to implementing the outstanding recommendations of the SDA Review as part of the proposed consolidation of federal discrimination laws. The consolidation of federal discrimination laws is one of the outcomes of the Australian Government's Response to the National Human Rights Consultation.

Challenges

121. The Sex Discrimination Amendment Bill 2010 has not yet been passed by the Australian Parliament and therefore is not part of Australian law.
122. The process for the consolidation of federal discrimination laws has commenced but the outcome of the process is yet to be determined.

Recommendation Twelve for Concluding Observations

- That the Australian Government implement its response to the Senate Legal and Constitutional Committee's *Report into the Effectiveness of the Sex Discrimination Act 1984* (Cth).
- That the Australian Government amend the SDA to insert a function for the Sex Discrimination Commissioner to commence self-initiated investigations for alleged breaches of the SDA, without requiring an individual complaint.

7.2.2 Equal Opportunity for Women in the Workplace Act 1999

123. Women continue to experience discrimination in the paid workforce. This is demonstrated by the level of women's workforce participation, particularly women with young children, the gender gap in pay, the level of women's representation in management and leadership positions, complaints of pregnancy discrimination and the prevalence of sexual harassment.
124. The *Equal Opportunity in the Workplace Act* (EOWW Act) plays a crucial role in promoting and progressing gender equality in Australian workplaces.

Positive developments

125. In 2009, the Australian Government Office for Women conducted a review of the EOWW Act

Challenges

126. The outcome of the review of the EOWW Act is not yet known.

Recommendation Thirteen for Concluding Observations

- That the Australian Government amend the EOWW Act to change its name to the *Gender Equality in the Workplace Act* and rename the Equal Opportunity in the Workplace Agency as the Gender Equality in the Workplace Agency.
- That the Australian Government amend the EOWW Act to include the achievement of gender equality as a key object of the Act.
- That the Australian Government amend the EOWW Act to cover Australian Government departments and statutory agencies with 100 employees or more.
- That the Australian Government amend the EOWW Act to include pay equity as a separate 'employment matter'.
- That the Australian Government ensure the Equal Opportunity in the Workplace Agency receives adequate funding to properly fulfill its statutory mandate.

7.3 Monitoring progress towards gender equality

(Art 2: Obligations to eliminate discrimination: Art 3: Advancement of women)

127. A key part of the national gender machinery of the country is the setting of indicators of progress, data collection, benchmarking, monitoring and evaluation of progress.
128. Regular independent monitoring and reporting against an integrated set of national gender equality indicators provides an evidence-based assessment of progress towards gender equality, benchmarked over time.

Positive developments

129. The Australian Government is currently working with the Australian Bureau of Statistics (ABS) to develop a set of gender equality indicators that will enable both Government and the community to measure progress towards gender equality in Australian society.
130. The Australian Government has also commenced work to develop an access point to key gender data on the ABS website

Challenges

131. There is currently no formal arrangement in place for an independent agency to report to Parliament and the Australian public on progress towards achieving gender equality across a broad range of national indicators.

Recommendation Fourteen for Concluding Observations

- That the Australian Government amend the SDA to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality and report to the Australian Parliament every two years.
- That the Australian Government ensure the Australian Bureau of Statistics is adequately resourced and required to generate gender-disaggregated data and analysis to enable independent monitoring of progress towards gender equality.

7.4 Human rights and equality protection (Art 2: Obligations to eliminate discrimination)

132. Australia has strong traditions of liberal democracy, an independent judiciary and a robust media. Our largely harmonious and prosperous society can mask systemic weaknesses and gaps in the protection of human rights in Australia. These weaknesses are compounded by a federated structure with responsibilities split between federal, state / territory and local governments.
133. In 2009, the Australian Government convened a national consultation on human rights which concluded that there is a patchwork of protection in Australia with “its inadequacies... felt most keenly by the marginalised and the vulnerable’ and with the ‘current legal and institutional framework fall[ing]short of th[e] commitment to respect, protect and fulfil human rights”.⁶⁹
134. While Australia has a strong record of ratification of human rights treaties, including CEDAW, there remains an ‘implementation gap’ at the domestic level.⁷⁰ The Australian Constitution and common law provides limited human rights protection.⁷¹ The absence of an entrenched guarantee of equality / non-discrimination in the Constitution is of particular concern.⁷² While there are federal, state and territory discrimination laws, there are inconsistencies between them and their coverage is not comprehensive.⁷³
135. There is no other comprehensive human rights protection legislation and access to remedies for human rights breaches is accordingly very limited.
136. Resources to the Australian Human Rights Commission have not kept pace with demand for its services, with the six statutory offices which constitute the Commission currently filled by four individuals and substantial increases in complaint handling loads having led to backlogs in complaint handling.⁷⁴

Positive developments

137. In November 2008, the Australian Government ratified the Optional Protocol to CEDAW.⁷⁵
138. The Australian Government, in partnership with the Australian Human Rights Commission has published an educational resource on CEDAW.⁷⁶
139. The Australian Government has also taken a lead role in commencing negotiations for securing the independent participation of national human rights institutions at the United Nations Commission on the Status of Women.
140. In April 2010, the Australian Government released the Australian Human Rights Framework in response to the recent National Human Rights Consultation. The framework includes a number of new measures, parliamentary review processes and legislative reform which will significantly improve the protection of human rights, including the right to equality, in Australia.

Challenges

141. Australia has yet to remove its reservations under CEDAW.
142. The measures announced by the Australian Government in response to the National Human Rights Consultation will not address all of the existing weaknesses in human rights protection in Australia.

Recommendation Fifteen for Concluding Observations

- That the Australian Government be congratulated for acceding to the Optional Protocol to CEDAW.
- That the Australian Government remove Australia's reservations under CEDAW.
- That the Australian Government continue to support the Australian Human Rights Commission and other national human rights institutions to secure independent participation status at the United Nations Commission on the Status of Women.
- That the Australian Government commence a process of constitutional reform to protect the principle of equality for all people in Australia.
- That the Australian Government fully incorporate into Australian law its human rights obligations, including through the adoption of a federal Human Rights Act.

¹ The Australian Human Rights Commission was until recently known as the Human Rights and Equal Opportunity Commission. In this submission, all references to documents produced prior to this change retain the name under which they were originally published.

² The Commission is established and operates under the *Australian Human Rights Commission Act 1986* (Cth) and exercises functions under the following legislation: *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1983* (Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2005* (Cth) and *Native Title Act 1993* (Cth)

³ National Human Rights Institutions Forum, *International Coordinating Committee of National Human Rights Institutions (ICC)*, www.nhri.net/default.asp?PID=85&DID=0 (viewed 30 June 2010)

⁴ Asia Pacific Forum: Advancing Human Rights in our Region, www.asiapacificforum.net/ (viewed 30 June 2010)

⁵ *Sex Discrimination Act 1984* (Cth), s 3(d). The SDA also prohibits sexual harassment in many areas of public life: s 28.

⁶ *Sex Discrimination Act 1984* (Cth), s 96

⁷ Human Rights and Equal Opportunity Commission, *What matters to Australian women and men: Gender equality in 2008: the Listening Tour Community Report* (2008). At www.humanrights.gov.au/sex_discrimination/listeningtour/index.html (viewed 28 October 2009).

⁸ World Economic Forum, *The Global Gender Gap Report 2009* (2009), p 63. See also World Economic Forum, *The Global Gender Gap Report 2008* (2008), p 43. At www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/PastReports/index.htm (viewed 5 March 2010).

⁹ ABS, *Average Weekly Earnings, Australia, February 2010* Catalogue No 6302.0 (2010). R Cassells, Y Vidyattama, R Miranti & J McNamara, *The impact of a sustained gender wage gap on the Australian economy* (2009), National Centre for Social and Economic Modelling, p v. At www.canberra.edu.au/centres/natsem/publications?sq_content_src=%2BdXJsPW0dHAIM0EIMkYIMkZ6aWJvLndpbi5jYW5iZXJyYS5iZHUuYXUIMkZuYXRzZW0IMkZpbmRleC5waHAIM0Ztb2RIJTNEchVibGJlYXRpb24IMjZwdWJsaWNhdGlvbUzRDEyNzAmYWxsPTE%3D (viewed 6 April 2010).

¹⁰ ABS, *Personal Safety, Australia, 2005* (Reissue), Catalogue No. 4906.0 (2006), p 7. At [www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12005%20(Reissue)?OpenDocument) (viewed 5 March 2010).

¹¹ ABS, *Personal Safety, Australia, 2005* (Reissue), Catalogue No. 4906.0 (2006), p 7.

¹² Equal Opportunity for Women in the Workplace Agency (EOWA), *EOWA 2008 Australian Census of Women in Leadership* (2008), p 3. At www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp (viewed 5 March 2010).

¹³ ABS, *How Australians Use Their Time 2006*, Catalogue No. 4153.0, (2008). At www.abs.gov.au/ausstats/abs@.nsf/mf/4153.0 (viewed 5 March 2010).

¹⁴ R Clare, *The Age Pension, superannuation and Australian retirement incomes* (2009), p 22, At www.superannuation.asn.au/Reports/default.aspx (viewed 5 March 2010).

¹⁵ Department of Families, Housing, Community Services and Indigenous Affairs, *Pension Review Background Paper* (2008) p 6. At www.fahcsia.gov.au/sa/seniors/progserv/PensionReview/Documents/pension_review/default.htm (viewed 9 February 2009).

¹⁶ CEDAW Committee, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006)

¹⁷ Section 307A BUT NEEDS TO BE CHECKED ONCE RECEIVES ASSENT FROM GG

¹⁸ A Evans & E Gray, 'What makes an Australian family?' in S Wilson, G Meagher, R Gibson, D Denmark & M Western (eds), *Australian Social Attitudes: The first report*, (2005), pp 12–29, p 27.

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- ¹⁹ Australian Human Rights Commission, *It's about time: women, men, work and family* (2007), p 86.
- ²⁰ Australian Human Rights Commission, *It's about time: women, men, work and family* (2007), p 87.
- ²¹ Sex Discrimination Amendment Bill 2010
- ²² *Sex Discrimination Act 1984* (Cth), s 7A. See further HREOC, *Federal Discrimination Law* (2008), 118-20.
- ²³ Australian Human Rights Commission, *It's about time: women, men, work and family* (2007), p 147; National Foundation for Australian Women, Security 4 Women, Australian Women's Coalition, National Rural Women's Coalition & WomenSpeak, *Barriers to Women's Employment Women and Recession Project* (2010), p 9. At www.ywca.org.au/news/women-and-recession-project (viewed 6 April 2010).
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- ²⁵ ABS, *Voluntary work, Australia, 2006*, Cat No. 4441.0 (2007), p 66
- ²⁶ Council of Australian Governments, *National Partnership Agreement on Early Childhood Education*, (2008), p 5
- ²⁷ Council of Australian Governments, Early Childhood Development Steering Committee, National Quality Standard for Early Childhood Education and Care and School Age Care (December 2009), 2.
- ²⁸ Kate Ellis, *Early Childhood Education and Child Care*, <http://kateellis.com.au/child-care/>. (viewed 30 June 2010)
- ²⁹ UNICEF, *The child care transition, Innocenti Report Card 8* (2008), p 2
- ³⁰ The Senate Education, Employment and Workplace Relations References Committee, *Provision of childcare* (2009), p 16.
- ³¹ ABS, *Average Weekly Earnings, Australia, February 2010* Catalogue No 6302.0 (2010); R Cassells, Y Vidyattama, R Miranti & J McNamara, *The impact of a sustained gender wage gap on the Australian economy* (2009), National Centre for Social and Economic Modelling, p v
- ³² ABS, *Average Weekly Earnings, Australia, February 2010* Catalogue No 6302.0 (2010).
- ³³ For example approximately 45% of women in the workforce are employed part-time compared with approximately 16% of men: ABS, 'Table 03: Labour force status by Sex,' *Labour Force, Australia, September 2009*, Catalogue No 6202.0 (2009). At [www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/2DE8EA310F563A2BCA257648001518D9/\\$File/6202003.xls#A163137K](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/2DE8EA310F563A2BCA257648001518D9/$File/6202003.xls#A163137K) (viewed 29 October 2009).
- ³⁴ ABS, *Labour Force, Australia, Detailed, Quarterly, May 2008*, Catalogue No. 6291.0.55.003 (2008).
- ³⁵ House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009). At www.aph.gov.au/house/committee/ewr/payequity/report.htm (viewed 30 June 2010)
- ³⁶ ABS, 'Table 06. Employed persons by Industry Subdivision and Sex,' *Labour Force, Australia, Detailed, Quarterly* Catalogue No. 6291.0.55.003 (2010); ABS, 'Table 10H. Average Weekly Earnings, Industry, Australia (Dollars) - Original - Persons, Full Time Adult Total Earnings,' *Average Weekly Earnings, Australia*, 6302.0 (2010)
- ³⁷ EOWA, *Pay, Power and Position: Beyond the 2008 EOWA Australian Census of Women in Leadership* (2009), p. 6. At www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Pay_Power_Position/Pay_Power_Position_Beyond_the_Census.pdf (viewed 26 October 2009).

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- ³⁸ *Fair Work Act 2009* (Cth), s 302.
- ³⁹ House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (2009).
- ⁴⁰ R Clare, *The Age Pension, superannuation and Australian retirement incomes* (2009), p 22,
- ⁴¹ B Heady & D Warren, *Families, Incomes and Jobs, Volume 3: A Statistical Report on Waves 1 to 5 of the HILDA Survey* (2008) p.55. This includes: working age couple with no children; working age couple with children; working age lone female; working age lone male; lone mother household; elderly couple household; elderly lone male; elderly lone female. The poverty measurement tool for this study is 50% of the median income poverty line.
- ⁴² R Tanton, Y Vidyattama, J McNamara, Q Ngu Vu & A Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 14. At https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).
- ⁴³ Department of Families, Housing, Community Services and Indigenous Affairs, *Pension Review Background Paper* (2008) p 37.
- ⁴⁴ ABS, *How Australians Use Their Time 2006*, Catalogue No. 4153.0, (2008)..
- ⁴⁵ ABS, *How Australians Use Their Time 2006*, Catalogue No. 4153.0, (2008).
- ⁴⁶ See *Australia's Future Tax System*, www.taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm (viewed 30 June 2010)
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- ⁵⁰ Since the introduction of the scheme, many women have used the scheme to build their retirement savings. During 2007–08, 60% of individuals who were paid co-contributions were female, and 31% of these women were aged between 46 and 55: Australian Tax Office (ATO), 'Superannuation System,' *Taxation statistics 2006–07*. Available at www.ato.gov.au/corporate/content.asp?doc=/Content/00177078.htm&page=50&H50 (viewed 6 April 2010).
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- ⁵⁴ The Hon. Tanya Plibersek, MP, Minister for Housing, 'Government launches 12 year plan to reduce homelessness in Australia,' (Media Release, 21 December 2008)
- ⁵⁵ House of Representatives Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless: Report on the inquiry into homelessness legislation* (2009), pp xiv-xv

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- ⁵⁶ House of Representatives Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless: Report on the inquiry into homelessness legislation* (2009), p xv
- ⁵⁷ House of Representatives Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless: Report on the inquiry into homelessness legislation* (2009), xv
- ⁵⁸ C Zappone, 'Home prices surge record 20%' *The Sydney Morning Herald*, 3 May 2010. At www.smh.com.au/business/home-prices-surge-record-20-20100503-u2im.html (viewed 30 June 2010) and ABC News, '20yrs of poor policy blamed for housing crisis', *ABC News Online*, 16 June 2010 www.abc.net.au/news/stories/2010/06/16/2928875.htm (viewed 30 June 2010)
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- ⁶¹ D Warren, *Aspects of Retirement for Older Women* (2006) p 45. At www.fahcsia.gov.au/sa/women/pubs/economic/aspects_retirement/Documents/Aspect_of_Retirement%20_report_final.pdf (viewed 30 June 2010).
- ⁶² J Dearden & W Jones, *Homicide in Australia: 2006–07 National Homicide Monitoring Program annual report*, Australian Institute of Criminology (2008), p 2
- ⁶³ J Dearden & W Jones, *Homicide in Australia: 2006–07 National Homicide Monitoring Program annual report*, Australian Institute of Criminology (2008), p 2
- ⁶⁴ VicHealth (2004), *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, p 8
- ⁶⁵ L Fergus, *Setting the Standard: international good practice to inform an Australian National Plan of Action to eliminate violence against women* (2008), Amnesty International Australia, p 6.
- ⁶⁶ L Fergus, *Setting the Standard: international good practice to inform an Australian National Plan of Action to eliminate violence against women* (2008), Amnesty International Australia, p 15.
- ⁶⁷ Australian Human Rights Commission, *Annual Reports*. Available at http://humanrights.gov.au/about/publications/annual_reports/index.html.
- ⁶⁸ S Rai, 'Institutional mechanisms for the advancement of women: mainstreaming gender, democratizing the state?' in S Rai (Ed), *Mainstreaming gender, democratizing the state? Institutional mechanisms for the advancement of women*, (2003), p 26.
- ⁶⁹ National Human Rights Consultation, *National Human Rights Consultation Report*, (2009), p127, At www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads#doc
- ⁷⁰ The United Nations treaty bodies charged with monitoring implementation of the ICCPR, ICESCR, CRC and CAT have each expressed concern that those treaties have not been adequately incorporated into Australia's legal system. See further: UN Human Rights Committee, *Concluding Observations: Australia* (2009), para 8; UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (2009), para 11; UN Committee on the Rights of the Child, *Concluding Observations: Australia* (2005), paras 9 - 10; UN Committee against Torture, *Concluding Observations: Australia* (2008), para 9.
- ⁷¹ The Australian Constitution provides safeguards for the following individual rights and freedoms:
- the right to compensation on just terms in the event of a compulsory acquisition of property by the Commonwealth (section 51(xxxi));
 - the right to trial by jury for a federal indictable offence (section 80);
 - the right to challenge the lawfulness of decisions of the Australian Government in the High Court (section 75(v));

- a prohibition on making federal laws that establish a religion, impose a religious observance or prohibit the free exercise of any religion (section 116); and
- a prohibition on making federal laws that discriminate against a person because of the state in which they live (section 117).

⁷² The UN Committee on the Elimination of Racial Discrimination has expressed this concern on several occasions. See further: UN Committee on the Elimination of Racial Discrimination: *Concluding observations: Australia* (2005), para 9; UN Committee on the Elimination of Racial Discrimination: *Concluding observations: Australia* (2000), paras 6-10

⁷³ Australia has four federal anti-discrimination laws, as identified in note 1 above. The particular grounds of unlawful discrimination covered under federal anti-discrimination law are: race, colour, descent or national or ethnic origin; sex; marital status; pregnancy or potential pregnancy; family responsibilities; disability; people with disabilities in possession of palliative or therapeutic devices or auxiliary aids; people with disabilities accompanied by an interpreter, reader, assistant or carer; a person with a disability accompanied by a guide dog or an 'assistance animal'; and age. Also falling within the definition of 'unlawful discrimination' is: offensive behaviour based on racial hatred; sexual harassment; harassment of people with disabilities; and victimisation and several criminal offences relating to discrimination.

Federal human rights and anti-discrimination law provides for the Commission to investigate and resolve complaints of discrimination and breaches of human rights. Over the past five years the number of complaints the Commission has received has increased by 81 percent. Unlike equivalent legislation in Australia's states and territories, federal anti-discrimination laws do not provide enforceable protection against discrimination on the basis of attributes such as religion, political beliefs, sexual orientation/ preference, sexuality/transgender, trade union activities, nationality, occupation, medical record and criminal record.

In 2009, the UN Human Rights Committee stated that it was 'concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law' and recommended that Australia 'adopt Federal legislation, covering all grounds and areas of discrimination to provide comprehensive protection for the rights to equality and discrimination': UN Human Rights Committee, *Concluding Observations: Australia* (2009), para 12. Similar concerns have been raised by the UN Committee on Economic, Social and Cultural Rights, which recommended in 2009 that Australia 'enact federal legislation to comprehensively protect the rights to equality and non-discrimination on all the prohibited grounds': UN Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (2009), para 14.

There are also gaps in the protections that are provided by the existing federal anti-discrimination laws. For example, the Sex Discrimination Act falls well short of achieving comprehensive protection in CEDAW. The protection provided to men and women varies, and protection against discrimination on the grounds of family responsibilities (being limited to direct discrimination that results in dismissal from employment) is minimal when compared to other areas of discrimination. Similarly, the Racial Discrimination Act does not provide protection against discrimination and other unlawful conduct on the ground of religion.

A number of practical obstacles further limit the effectiveness of current federal anti-discrimination laws. For example, the various tests for direct discrimination incorporate a requirement that an applicant establish less favourable treatment compared with a hypothetical 'comparator'. The practical application of the comparator, however, has proved problematic due to difficulties in constructing the same or similar circumstances for carrying out the comparison. Practical difficulties also arise in relation to proving indirect discrimination. Under the Disability Discrimination Act, for example, applicants must establish that they have been required to comply with an unreasonable requirement or condition with which they cannot comply, but with which a substantially higher proportion of persons without their disability can comply. This has raised difficulties and uncertainties where, for example, an applicant can technically comply with the relevant requirement, but with additional hardships not experienced by other persons without their disability.

In addition, despite widely recognised difficulties in proving discrimination, current federal laws generally require the applicant to carry the onus of proof in relation to all elements of discrimination.

This is despite the reality that information relating to causation (such as the respondent's basis for treating the applicant in a particular way) is typically within the control of the respondent, not the applicant.

Further, each of the laws establishes a proscriptive, negative-based standard. Discriminatory conduct is prohibited, rather than non-discriminatory or other positive conduct being required. Federal anti-discrimination laws lack positive obligations to promote equality

⁷⁴ The Commission has not had a full time Race Discrimination Commissioner since 1999. At present, the Commission's President also undertakes the statutory functions of the Human Rights Commissioner, and the Disability Discrimination Commissioner undertakes the statutory functions of the Race Discrimination Commissioner. For further information on the long term funding issues that the Commission has faced over the past decade see: Australian Human Rights Commission, *Submission to the Joint Committee of Public Accounts and Audit Inquiry on the Effects of the ongoing Efficiency Dividend on Smaller Public Sector Agencies* (2008). At http://humanrights.gov.au/legal/submissions/2008/20080729_efficiency_dividend.html (viewed 30 June 2010)

⁷⁵ The Hon Tanya Plibersek, MP. Minister for the Status of Women and The Hon Robert McClelland MP, Attorney-General, Australia comes in from the cold on Women's rights' (Media Release 24 November 2008). At www.tanyaplibersek.fahcsia.gov.au/mediareleases/2008/Pages/womens_rights_25nov08.aspx (viewed 30 June 2010)

⁷⁶ Australian Human Rights Commission and Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, *Women's Human Rights: United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*. At http://humanrights.gov.au/sex_discrimination/publication/CEDAW/index.html (viewed 30 June 2010)