

# 2014 CEDAW Shadow Report

## Aboriginal and Torres Strait Islander Parallel Report

An Aboriginal and Torres Strait Islander women's perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

To be read in conjunction with the 2014 CEDAW Shadow Report



**YWCA**  
Australia

# Acknowledgements

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Sisters Inside

National Congress of Australia's First Peoples

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National Women's Alliances

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And all those who completed the online survey.

This report was prepared in 2014 and reflects information accurate at that time. It is anticipated that the Australian Government's CEDAW Report will be submitted in 2016 and these reports are being released to coincide with this submission.

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# Summary of recommendations

## Article 4

- 4.1** That the Australian Government implements an affirmative action strategy to set targets for Aboriginal and Torres Strait Islander women to be appointed to Government Boards.
- 4.2** That the Australian Government implements an affirmative action strategy for the inclusion of representation of Aboriginal and Torres Strait Islander women across all levels of the Australian public service and parliament(State, Territory and Federal).
- 4.3** That the Australian Government support initiatives and strategies that build the skill set for Aboriginal and Torres Strait Islander women, in particular in roles of leadership, governance and decision making.
- 4.4** That the Australian Government invest in an education and awareness campaign to highlight the work of CEDAW and other international mechanisms, particularly as they relate to Aboriginal and Torres Strait Islander women.
- 4.5** That the Australian Government adequately resource the non-Government sector and Aboriginal and Torres Strait Islander community controlled agencies for the purpose of raising awareness of international obligations and the mechanisms for ensuring accountability.
- 4.6** That the Australian Government adequately resource the non-Government sector and Aboriginal community controlled agencies for the purpose of raising awareness of international obligations and the mechanisms for ensuring accountability.
- 4.7** That the Australian Government commit to development of data tools to record disaggregated data, including disability, age, gender and race. These data sets can then be utilised for both qualitative and quantitative in information and analysis. This should also include consistency of definitions to allow for comparative analysis, and be used across different sectors (eg, housing, health etc).

## Article 7

- 7.1** That the committee commends the election of Nova Peris as the first Aboriginal woman in the Federal Parliament.
- 7.2** That the Australian Government implements temporary special measures to ensure increased participation of Aboriginal and Torres Strait Islander women in public and political life.
- 7.3** That the Australian Government allocates and adequately resources specific targeted approaches to increasing representation and education levels of Aboriginal and Torres Strait Islander women.
- 7.4** That the Australian Government implements an internship program (with government Departments and Parliament) for Aboriginal and Torres Strait Islander women to increase their understanding and involvement in the political system.

## Article 8

- 8.1** That the Australian government be commended for its efforts thus far in supporting the appointment and engagement of Aboriginal and Torres Strait Islanders at the International level, and that the Committee urges the Australian Government to set this as a key priority area for the next reporting cycle.
- 8.2** That the Australian Government allocates and adequately resources NGOs and Aboriginal and Torres Strait Islander Community Controlled organisations to undertake specific representative roles, maintain frontline services and engage in critical advocacy work.
- 8.3** That the Australian Government makes a commitment to have at least one Aboriginal or Torres Strait Islander woman as a NGO representative on any official government delegation to the United Nations Commission on the Status of Women and any associated meetings.



## Article 13

- 13.1** That the Australian Government is commended for its commitment to recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution and moves towards a referendum in the next 2 years.
- 13.2** That the Australian Government prioritises funding to Aboriginal and Torres Strait Islander specific NGOs for work in their own communities.
- 13.3** That the Australian Government ensures it consults effectively with Aboriginal and Torres Strait Islander people on the integration of services in their communities.
- 13.4** That the Australian Government takes positive and necessary measures to address employment and training issues impacting on Aboriginal and Torres Strait Islander women, including the setting of specific gender targets in any Indigenous employment strategies.
- 13.5** That the Australian Government in collaboration work with the superannuation industry to develop policy guidelines to address the disparity for Aboriginal and Torres Strait Islander peoples (especially women) in relation to the contribution, management and execution of their superannuation funds.

## Article 15

- 15.1** That the Australian Government commits to adequately funding cultural and gender specific legal services including the provision for rural, regional and remote servicing.
- 15.2** That the Australian Government re-funds specialist and diversion courts (across all jurisdictions) including Murri Courts.
- 15.3** That the Australian Government adequately resource diversion courts to ensure that there are appropriate and effective programs available to receive referrals from specialist courts on behalf of Indigenous female offenders.

- 15.4** That the Australian Government expand diversion programs available to police to divert Indigenous women and girls, that are both culturally and gender appropriate.
- 15.5** That the Australian Government commit to complying with and enforcing international human rights instruments.
- 15.6** That the Australian Government fulfil their international obligations by developing collaborative sustainable funding models to support Aboriginal community controlled agencies that provide legal and other support services to Aboriginal victims/survivors of family violence in urban, rural and remote areas, and cease shifting responsibility between various levels of government.
- 15.7** That the Australian Government adopts special measures in consultation with Aboriginal peoples to address the significant ongoing disadvantage of Aboriginal and Torres Strait Islander women and children that perpetuates rates of family violence.
- 15.8** That the Australian Government provides ongoing support for evidence based, effective community-led interventions for Aboriginal and Torres Strait Islander women and children. Furthermore the Australian Government must work in partnership with Aboriginal and Torres Strait Islander communities to develop effective consultation and engagement processes to ensure informed policy and program development.
- 15.9** That the Australian Government works collaboratively across all levels of government and community legal sectors to develop a framework to address the over-representation of Aboriginal and Torres Strait Islander women in the criminal justice system. Including data collection, reporting, community support, diversionary programs and other community based solutions.

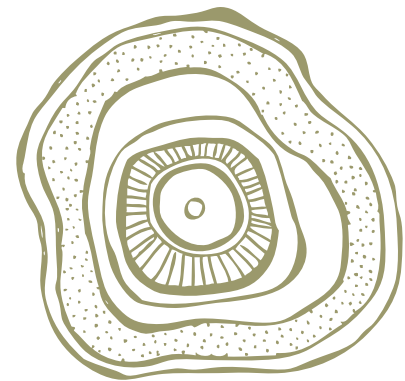


# Methods

The YWCA Australia managed the project for the collation of the CEDAW NGO report and as such engaged a specialised consultant to work on the preparation of the Aboriginal and Torres Strait Islander supplementary report.

The work was overseen by an independent Advisory committee and engaged with Aboriginal and Torres Strait Islander women and agencies to support this work.

The report is a combination of survey data, community consultations and engagement with peak bodies to identify specific issues for Aboriginal and Torres Strait Islander women.



# Terms used in this report

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

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

Terms such as Indigenous and Aboriginal may be used in quotes or where they were used in particular documents, such as the United Nations Declaration on the Rights of Indigenous peoples.

# Political context

Australia experienced a change of government in September 2013.

In recent budget announcements over \$500 million was removed from the Indigenous Affairs portfolio and this has to date, and will in the future, have adverse effects on frontline services and more broadly. Specific areas of concern are raised within the articles of this report.

## Introduction

According to the Australian Bureau of Statistics (2011), the Australian Indigenous community (Aboriginal and/or Torres Strait Islander peoples) make up 3.0% (669,900 approximately) of the total Australian population. The Aboriginal and/or Torres Strait Islander women's population makes up 50.2% (336,200) of the overall Indigenous Australian population.

Aboriginal and Torres Strait Islander women have for many years continued to experience a level of discrimination, racism and disadvantage in Australia. The extent of this disadvantage and discrimination is also compounded by individual experiences, cultural identity and geographical positioning.

For many decades Aboriginal and/or Torres Strait Islander women have been subjected to policies of disadvantage and exclusion in many sectors of society and this has left a lasting impact on the current situation of many Aboriginal and Torres Strait Islander women today.

It is acknowledged that in more recent times that Australian government has taken steps to improve human rights standards and consequently the lives of some of the most disadvantaged people within Australia. However progress remains slow and when reviewing the last decade of UN reports it seems that not much has changed.

This report is produced in conjunction with the 2014 CEDAW Shadow Report and notes that many of the issues raised in that report also have significant impact for Aboriginal and Torres Strait Islander women.



# Article 4

## Temporary special measures

### 2010 CEDAW concluding observations

#### CEDAW/C/AUS/CP/7 - (27)

The committee reiterates its recommendation in its previous concluding observations (CEDAW/AUL/CO/5, para.17) that the state party fully utilise the Sex Discrimination Act and consider the adoption of temporary special measures, in accordance with Article 4, paragraph 1, of the Convention and the Committee's general recommendation No.25 to increase further the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, including Indigenous women and women from ethnic minorities.

### Positive developments

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

The National Congress of Australia's First Peoples continues to lead the way in implementing gender equality as a core principle of the framework of the Congress.

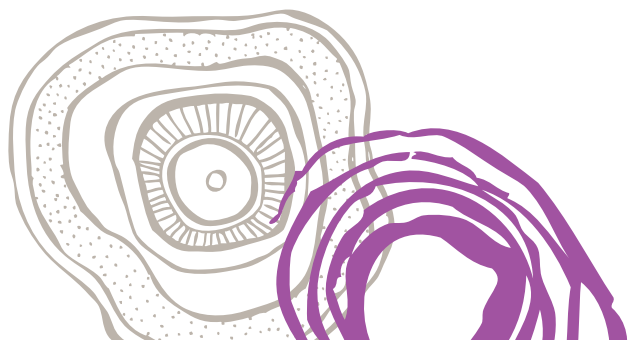
### Gender equality targets

The Australian Government has continued its commitment to implementing gender equality principles, in particular, identifying strategies to improve representation on Government Boards. As at June 30, 2012 women held 38.4 per cent of Government board appointments and they continue to work towards at least 40% of women on Australian Government Boards.

### Challenges

#### Gender equality targets

Strategies have been in place to develop targeted opportunities for women on Boards and committees (40% target) however these strategies have not identified any specific targets for Aboriginal and Torres Strait Islander women. The provision of scholarships to access formal governance training and affirmative action principles have helped to support women, but there is little evidence that this has made any significant difference for Aboriginal and Torres Strait Islander women.



There are potentially six key areas of focus that could be influencing this result:

- Lack of implementation of quotas to increase the participation of underrepresented groups in leadership positions, in particular Aboriginal and Torres Strait Islander women;
- An absence of sub-strategies that seek to engage and promote Aboriginal and Torres Strait Islander women to these roles and positions;
- Lack of experience of Aboriginal and Torres Strait Islander women in these roles, possibly precluding them from being competitive in the process;
- A focus on government boards does not address key areas of interest and participation by Aboriginal women, eg. NGO Sector;
- There is little understanding of CEDAW and other International instruments amongst Aboriginal and Torres Strait Islander women and hence there is a disconnect within domestic policy development;
- Lack of disaggregated data does not allow for a true reflection, or analysis of trends, in participation for Aboriginal and Torres Strait Islander women.

## Recommendations proposed for concluding comments

- 4.1** That the Australian Government implements an affirmative action strategy to set targets for Aboriginal and Torres Strait Islander women to be appointed to Government Boards.
- 4.2** That the Australian Government implements an affirmative action strategy for the inclusion of representation of Aboriginal and Torres Strait Islander women across all levels of the Australian public service and parliament (State, Territory and Federal).

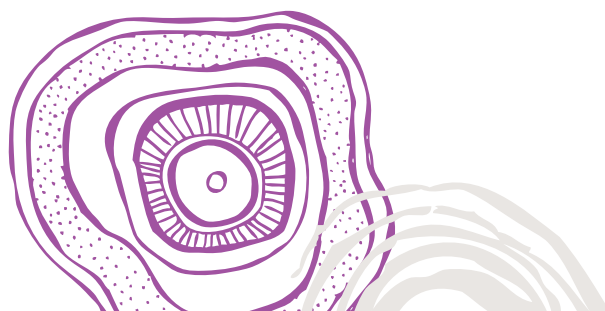
**4.3** That the Australian Government support initiatives and strategies that build the skill set for Aboriginal and Torres Strait Islander women, in particular in roles of leadership, governance and decision making.

**4.4** That the Australian Government invest in an education and awareness campaign to highlight the work of CEDAW and other international mechanisms, particularly as they relate to Aboriginal and Torres Strait Islander women.

**4.5** That the Australian Government adequately resource the non-Government sector and Aboriginal and Torres Strait Islander community controlled agencies for the purpose of raising awareness of international obligations and the mechanisms for ensuring accountability.

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**4.7** That the Australian Government commit to development of data tools to record disaggregated data, including disability, age, gender and race. These data sets can then be utilised for both qualitative and quantitative in information and analysis. This should also include consistency of definitions to allow for comparative analysis, and be used across different sectors (eg, housing, health etc).



# Article 7

## Rights to participate in public life



### 2010 CEDAW concluding observations

#### CEDAW/C/AUS/CP/7 - (35)

The committee recommends that the State party adopt targeted measures, including temporary special measures with clear time frames, in accordance with Article 4, paragraph 1 of the Convention and the Committee's general recommendation No. 25 to ensure equal participation and representation of women in public and political life, with particular focus on Aboriginal and Torres Strait Islander women and women with disabilities

### Positive developments

#### Representation in the Parliament

In September 2013, Ms Nova Peris was elected into the Federal Parliament. This made her the first Aboriginal woman elected, and the fourth Aboriginal person elected to the Federal Parliament.

#### Funding for women's alliances

The Australian Government has continued to fund sector-specific women's agencies and expanded funding to the six National Women's Alliances (including an Aboriginal and Torres Strait Islander Women's Alliance).

### Local government

There has been a level of recognition and increased attention given to the need for greater diversity at a local government level. The Women in Local Government Association (WGLA) has undertaken a campaign to increase the diversity amongst women in local government and particularly targets ways in which Aboriginal and Torres Strait Islander women can be encouraged to participate. Whilst these programs are in their early stages and the success cannot be measured, it is an encouraging and important investment in Aboriginal and Torres Strait Islander women being placed in roles as decision makers and community representatives and can lead to substantial advancement in gender equality.

### Leadership education

A number of different programs have emerged that are focussed on increasing the capacity of leadership and development of Aboriginal and Torres Strait Islander women. In particular OXFAM's *Straight Talk* is one way of increasing Aboriginal and Torres Strait Islander women's understanding of their role as change makers. The program has expanded its scope in recent years to also include regional workshop in order to get the greatest reach for Aboriginal and Torres Strait Islander women. Over 450 women (since 2009) have participated in the program with many of them citing *Straight Talk* as a direct reason for them pursuing career changes, standing for election and joining political parties and other action groups to bring about change.

*Straight Talk* – continues to bring together Aboriginal and Torres Strait Islander women, in both

National and regional forums, to provide the opportunity to learn about the Australian political system and encourage women to become candidates and elected representatives through all tiers of government, and there is evidence to suggest that this is having positive impacts across the country.

The program has also a long term commitment to work with Torres Strait Islander women living in the Torres Strait Islander region, where they have different levels of government and Autonomy. Formal representation of women in the Torres Strait is minimal, with only two board positions on the Torres Strait Regional Authority (TSRA) being held by women. The TSRA has also made a long- term commitment to work in partnership with other providers to development Torres Strait Islander women's capacity for leadership, governance and advocacy capacity.

Similarly the Australian Indigenous leadership centre (AIRC) delivers a range of accredited leadership programs for Aboriginal and Torres Strait islander peoples, of which approximately 70% of all participants are women. This demonstrates the high demand from women to access education opportunities, but also indicates a high success rate due to the funding model that provides scholarships for participation.

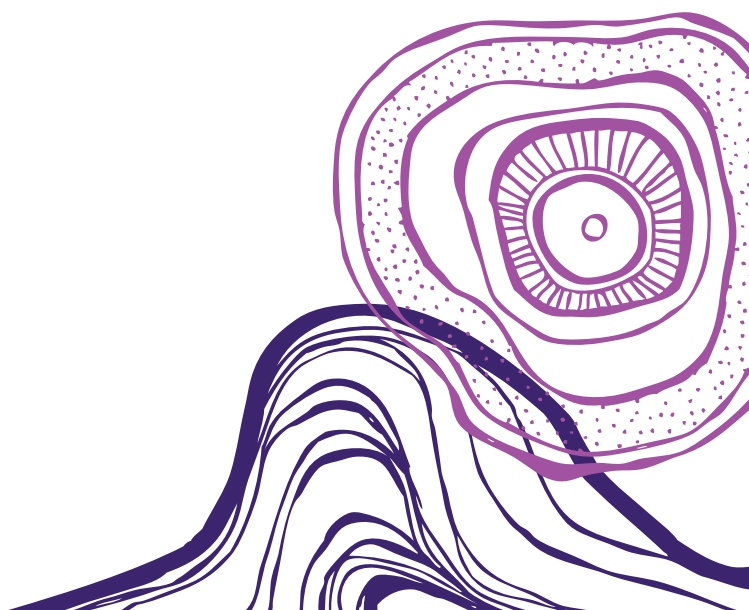
## Challenges

A large focus of work in the Australian Government's Aboriginal and Torres Strait Islander Affairs portfolio focuses specifically on social justice reform and very little on the increased capacity of women generally. There is little discussion around the implementation of temporary special measures or gender equality principles and how they relate to Aboriginal and Torres Strait Islander women. Substantial and long term investment is the only way that there will be change in this regard. Providing focussed education and skill development will be the first step in ensuring that Aboriginal and Torres Strait Islander women have access to opportunities, but also providing quotas and positions on boards/ committees will also be critical to strategic and socio-economic growth.

Additionally increasing the numbers of women as candidates and ultimately in elected roles must also be considered a priority area. Therefore investment in the skills, knowledge and capacity of women is paramount to changing the current unacceptable situation.

## Representation in the Parliament

In the 2010 CEDAW Concluding Observations the Committee noted and appreciated the positive developments of increased representation of women in senior ranks of public office and at the time 35% of all Australian parliamentarians were women. In recent times this has reduced with the 43rd Parliament being introduced where women now occupy 28 Senate seats and 37 seats in the House of Representatives, making up approximately 28% of the Parliament. This highlights an ongoing challenge in the political system, whereby the representation of women in the parliament is determined only by party preferences and successful election, rather than the application of any affirmative action, temporary special measures or quota targets. The glaring omission of Aboriginal and/or Torres Strait Islander women from the all Australian Parliaments (Federal and State) further identifies the need for greater effort in this regard. While Aboriginal and Torres Strait Islander women are excluded from representative roles they will, individually and collectively, continue to be subjected to policies and decisions that are imposed on them rather than collaboratively negotiated and managed.



## Leadership education

The crux of the challenge to increase representation remains one of opportunity, education and further skills development. As mentioned in examples above the *Straight Talk* and AILC programs are two of many nationally targeted programs that exist for Aboriginal and Torres Strait Islander women, and there are many more examples that can be cited at a local, regional and state level. However, underpinning all of these programs is the need for ongoing funding, support and resources to support the long term investment in Aboriginal and Torres Strait Islander women, coupled with opportunities to put these skills into practice. As many Aboriginal and Torres Strait Islander women come from low socio-economic standard the need to provide access to this type of training and development through scholarships and sponsored programs is imperative to reach the level of engagement required.

Many organisations rely on recurrent funding from the Government and corporate sector so that the courses and programs can be offered to the participants at no cost. There needs to be continued funding and support for institutions such as this, not only to increase access to education, but to provide practical tools to help foster leadership development amongst Aboriginal and Torres Strait Islander women.

Additionally support to foster an internship program for Aboriginal and Torres Strait Islander women will provide exposure to the mechanism of the government and political systems and provide an invaluable learning opportunity to increase the participation of Aboriginal and Torres Strait Islander women in public and political life.

## Recommendations proposed for concluding comments

- 7.1 That the committee commends the election of Nova Peris as the first Aboriginal women in the Federal Parliament.
- 7.2 That the Australian Government implements temporary special measures to ensure increased participation of Aboriginal and Torres Strait Islander women in public and political life.
- 7.3 That the Australian Government allocates and adequately resources specific targeted approaches to increasing representation and education levels of Aboriginal and Torres Strait Islander women.
- 7.4 That the Australian Government implements an internship program (with government Departments and Parliament) for Aboriginal and Torres Strait Islander women to increase their understanding and involvement in the political system.



# Article 8

## Right to participate at an international level



### Positive developments

#### International advocacy

Ms Megan Davis was re-appointed (first Australian Indigenous woman) as a member of the United Nations Permanent Forum on Indigenous issues

In recent years there has been an increase in the participation of Aboriginal and Torres Strait Islander women at various levels of International advocacy. This has assisted in some really positive outcomes including the inclusion of key statements into United Nations processes, utilisation of International caucuses to advance advocacy and the development of position papers to support new domestic policy approaches.

### Challenges

#### Diminished capacity of NGO's

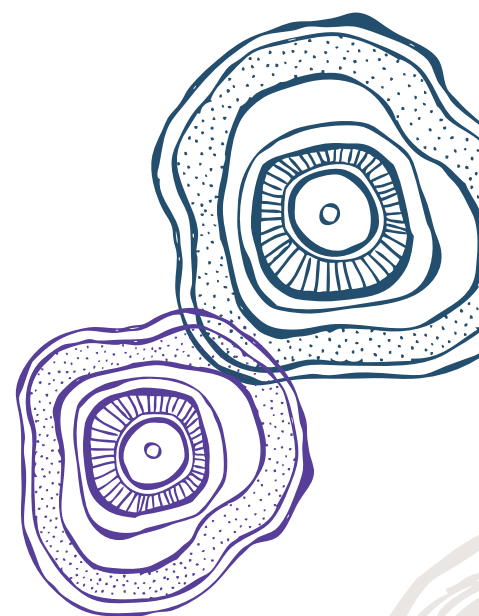
Recent changes to funding and the allocation of resources has also contributed to the diminished capacity of NGO's to undertake development and strategic representation work. Focus has been drawn to essential services and limited resourcing also means that many organisations and individuals are stretched to capacity. There is little scope for future planning, and the engagement at an international level is often given a lower priority than local and immediate issues. Ultimately this leads to inconsistency in the level of input, process and reporting for International forums and means that crucial work cannot be built upon year after year. At times this sporadic approach leads to inconsistency or an absence in representation and then ultimately the exclusion of the voices of Aboriginal and Torres Strait Islander women.

It is also noted that Aboriginal and Torres Strait Islander women have cited difficulty in engaging in other areas of advocacy and development where they don't relate directly to their day to day role. This is particularly important in the context of CEDAW training and other areas of political action as the pressure to meet Key Performance Indicators and funding requirements place restrictions on Indigenous women in advocacy and representation across International forums. In July 2014 there were changes to contracts for many NGO organisations (in particular community legal centres), restricting their capacity to engage in advocacy (including law reform), despite findings by the Productivity Commission that advocacy was an efficient use of resources. Cuts to the Family Violence Prevention Legal Services is also an area that will have adverse effects for Aboriginal and Torres Strait Islander women. This is another way that Indigenous women often find their voices silenced from the mainstream and their needs are often overlooked in relation to social justice and domestic policy issues. Failure to engage at a domestic level only heightens the likelihood of their issues, concerns and engagement being overlooked at an international level.

A recent example of this was the Australia delegation to the Commission on the Status of Women in 2014. The Australian government has generally always worked toward having an Indigenous NGO representative on the official government delegation to United Nations forums, however in 2014, the delegation did not include an Aboriginal or Torres Strait Islander woman thus reducing the capacity for engagement in an International context. It is imperative that the government makes an ongoing commitment to ensure that Aboriginal or Torres Strait Islander women are a part of the official delegation each year and to maintain some level of coordination and input on behalf of Aboriginal and Torres Strait Islander women.

## Recommendations proposed for concluding comments

- 8.1** That the Australian government be commended for its efforts thus far in supporting the appointment and engagement of Aboriginal and Torres Strait Islanders at the International level, and that the Committee urges the Australian Government to set this as a key priority area for the next reporting cycle.
- 8.2** That the Australian Government allocates and adequately resources NGOs and Aboriginal and Torres Strait Islander Community Controlled organisations to undertake specific representative roles, maintain frontline services and engage in critical advocacy work.
- 8.3** That the Australian Government makes a commitment to have at least one Aboriginal or Torres Strait Islander woman as a NGO representative on any official government delegation to the United Nations Commission on the Status of Women and any associated meetings.



# Article 13

## Economic, social and cultural rights

### Positive developments

The Australian Constitution does not currently recognise Aboriginal and Torres Strait Islander peoples and over the past few years there has been a concerted effort to engage in a national discussion about this important issue. Australian political parties have provided bi-partisan support to the proposed inclusion of Aboriginal and Torres Strait Islander people in the Australian constitution.

On 28 November 2012, the Parliament agreed that a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was appointed to inquire into and report on steps that can be taken on Indigenous constitutional recognition. Additionally the Australian Parliament also passed an 'Act of Recognition' in March 2013 registering its commitment to progress towards a referendum on the issue within the next two years. It is also acknowledged that there continues to be a need for extensive community consultation and education awareness amongst the broader Australian community before proceeding to Referendum.

### Challenges

#### Funding cuts

In May 2014 a number of recommendations were handed to the government by the National Commission of Audit in relation to Indigenous expenditure. The resulting flow on affects of this report have had a substantial impact on Indigenous organisations and services and put a great deal of pressure on individuals, in what now is considered by many to be an unstable economic position. The current scenario of largely unexplained cuts to the NGO sector and community organisations can be potentially damaging to the livelihoods and wellbeing of individuals, families and communities. In particular many organisations are concerned about the loss of core services, and successful community development programs.

The National Congress has been established as the only national representative voice for Australia's First peoples and had previously negotiated an establishment period for funding by the Australian Government. One of the most notable recommendations by the National Commission of Audit was to overturn the 2013 (previous government's) budget commitments to fund the Congress until 2017. Subsequently this resulted in \$15 million loss in funding and had adverse effects on staffing, advocacy and representation. These cuts have been interpreted by many Aboriginal and Torres Strait Islander people as a decision to oppose the rights of Aboriginal and Torres Strait Islander people and their right to self-determination. Additionally the government further responded by putting in place a government appointed Indigenous Advisory Council that reports directly to the Prime Minister.

This further seeks to undermine the voices of Aboriginal and Torres Strait Islander people and brings into question the level of accountability and transparency of such processes. The other key factor that is impacting Indigenous communities is the emergence of large non-Indigenous NGO's that are competing (and being successful) in funding for programs in Indigenous communities. Whilst some of these NGO's are working in partnership with Indigenous communities, many are seen to be broaching in on Indigenous affairs and ultimately diminishing the effectiveness and capacity of smaller led Aboriginal and Torres Strait Islander community based organisations

### **Integration of services**

There is a lack of integration across government and non-government sectors including a lack of adequate resources for integrated work. For example organisations are asked to provide integrated services, but with no funds to actually set up integrated systems and or transition into new working arrangements. Integrated services also at times runs the risk of losing focus on being an Indigenous specific service (eg. people being encouraged to use mainstream services that do not appear to have culturally appropriate principles or practices) to focus on individual needs. These new arrangements require adequate resources and planning to provide successful and sustainable services.

### **Indigenous employment**

In 2008 the Australian Government developed an Indigenous Reform Agenda, including Closing the Gap targets, to address key social factors impacting Indigenous peoples. Closing the Gap is a commitment by all Australian governments to improve the lives of Indigenous Australians.

A national integrated Closing the Gap strategy was agreed through the Council of Australian Governments (COAG) and has a range of agreements and partnerships including education, housing, health and employment and has a clear focus on overcoming Indigenous disadvantage. The government reports on all six target areas to the parliament on an annual basis. For the purpose of this report it is noted that one of the Closing the Gap targets is:

- To halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade (by 2018).

Further work needs to be undertaken in domestic policy development and strategies for change to ensure that a greater focus is placed on meaningful and sustainable employment and training outcomes for Aboriginal and Torres Strait Islander women. Gender specific initiatives and targets need to be set within any Indigenous employment strategies.

### **Indigenous employment and training review**

A major review has been undertaken by a government appointed committee into Indigenous Training and Employment. The (Forrest) Review was subject to extensive public consultations and was made public in August 2014. While the Government is still considering the Review recommendations the outcomes and report process will determine a number of key policy changes. There may be a number of key areas to consider:

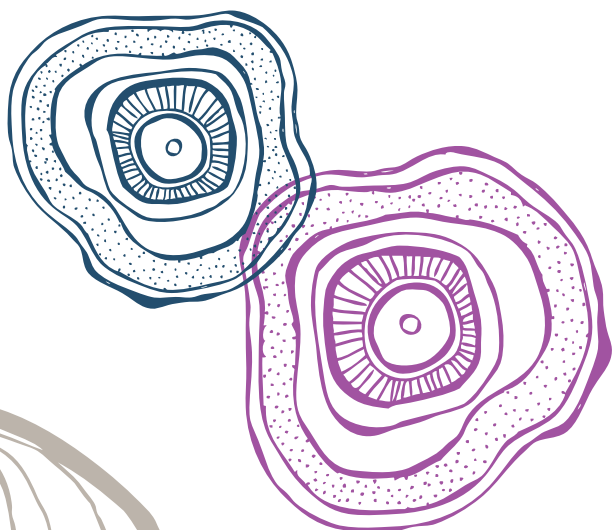
- How many of the recommendations will focus on gender specific initiatives, including increased access to employment and training opportunities for Indigenous women;
- What implications there are for Indigenous people living in rural, regional and remote locations; and
- A devaluing of cultural practices, traditions and ceremonies that are not recognised in westernised models of societal norms.

The impacts of this review will be an area of considerable focus in future reporting for CEDAW.



## Superannuation

Aboriginal and Torres Strait Islander women face increased levels of disadvantage in relation to the economic participation and in particular this has highlighted a growing area of concern in relation to Aboriginal and Torres Strait Islander women accessing sufficient superannuation<sup>2</sup> savings for retirement. Compared to non-Indigenous women, there is a disproportionately (low) participation of Aboriginal and Torres Strait Islander women in the labour force, therefore leading to lower, if any, contributions into superannuation schemes. Other factors that are also polarised for Aboriginal and Torres Strait Islander women include casualisation and impermanency in employment, racism and discrimination, geographical disadvantage, family, community and cultural roles which may also contribute to time out of employment. The susceptibility to chronic illness also has impact on life expectancy, where it is noted that the life expectancy of Aboriginal and Torres Strait Islander women is lower than that of non-indigenous women by 9.5 years. Therefore the expectation of living to enjoy a retirement income generated by superannuation is significantly lower for Aboriginal and Torres Strait Islander women. This coupled with recent announcements to increase the Age Pension to 70 years also greatly puts increased pressure on Aboriginal and Torres Strait Islander women moving into retirement. It must also be acknowledged however that many Indigenous women currently or recently approaching retirement or now in retirement had poorer life expectancy trajectories. There is a great deal of work that needs to be done to increase the capacity for culturally appropriate strategies to manage superannuation funds and a greater engagement with Aboriginal and Torres Strait Islander individuals and communities to develop financial literacy around superannuation funds and individual funds management.<sup>3</sup> It will be important to address superannuation issues as an emerging and longer term strategy as the life expectancy for Aboriginal and Torres Strait Islander women improves.



## Recommendations proposed for concluding comments

- 13.1** That the Australian Government is commended for its commitment to recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution and moves towards a referendum in the next 2 years.
- 13.2** That the Australian Government prioritises funding to Aboriginal and Torres Strait Islander specific NGOs for work in their own communities.
- 13.3** That the Australian Government ensures it consults effectively with Aboriginal and Torres Strait Islander people on the integration of services in their communities.
- 13.4** That the Australian Government takes positive and necessary measures to address employment and training issues impacting on Aboriginal and Torres Strait Islander women, including the setting of specific gender targets in any Indigenous employment strategies.
- 13.5** That the Australian Government in collaboration with the superannuation industry develop policy guidelines to address the disparity for Aboriginal and Torres Strait Islander peoples (especially women) in relation to the contribution, management and execution of their superannuation funds.



# Article 15

## Legal Rights

### 2010 CEDAW concluding observations

#### CEDAW/C/AUS/CO/7. (41)

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

### Positive Developments

Despite a significant focus being placed on access to Legal services for Aboriginal and Torres Strait islander women in previous CEDAW reports, there are no positive developments to report. It remains an area of growing concern.

### Challenges

Two case studies highlight some of the current challenges, including over-policing and brutality in response to a domestic incident where an Aboriginal woman was tasered by police at her Brisbane home in February 2014. As a result the woman has been blinded in one eye. Upon investigation the Police service defended their use of a taser in 'self-defence'. In another situation an Aboriginal woman was held in a Western Australian Jail without conviction for nearly 2 years. The woman suffers foetal alcohol syndrome and was found unfit to plead when she faced court over driving charges. This has raised concerns about how many other people may have similar issues, that are locked up indefinitely and the system has failed.

### Prison characteristics

Aboriginal and Torres Strait Islander people are disproportionately represented in the justice system. At 30 June 2013, there were 8,430 prisoners who identified as Aboriginal and Torres Strait Islander. This represented just over one quarter (27%) of the total prisoner population (30,775). The Northern Territory had the highest proportion of Aboriginal and Torres Strait Islander prisoners (86%). There were 775 female prisoners, comprising 9% of the Aboriginal and Torres Strait Islander prisoner population and approximately 33% of all incarcerated women in Australia. The median age of Indigenous females in incarceration is 31.6 years.<sup>4</sup>

Nationally, the increase in incarceration rates between 2000 and 2010 is greater for Indigenous women than any other group. There was a 58.6% increase in incarceration for Indigenous women and a 22.9% increase for non-Indigenous women. While the over-representation of Indigenous men and women in Australia is unacceptable, these high rates highlight that the incarceration rates of Indigenous women have the highest increase in incarceration rates and can no longer be overlooked.<sup>5</sup>

## Policy and advocacy

Historically, Aboriginal and Torres Strait women have been poorly represented in national law and justice policy debates due to the strong focus of advocacy groups on criminality and responding to the needs of Aboriginal and Torres Strait Islander men. Recent cuts by the Commonwealth to policy and advocacy services across the sector are highly concerning.

In 2001, 10 years on from the Royal Commission into Aboriginal Deaths in Custody, the then Social Justice Commissioner Tom Calma reported that:

*Aboriginal women remain largely invisible to policy makers and program designers with very little attention devoted to their specific situation and needs. This is of critical importance, particularly because of the impact that imprisonment has on Indigenous families and communities (especially through separation from children).<sup>6</sup>*

We support building the capacity of Aboriginal and Torres Strait Islander women and Aboriginal and Torres Strait Islander women's organisations to participate in national policy discussions. Cuts to policy, advocacy and law reform functions have diminished the voice of Aboriginal and Torres Strait Islander women. The National FVPLS Forum considers it is the responsibility of governments to be informed by on-the-ground experiences, especially where there are gaps and systemic failures. Without capacity to contribute to public discussion and policy processes, there is a risk to the development of policy, systems and services that do not appropriately reflect the needs of communities and individuals.

## Access to cultural and gender specific services

Aboriginal and Torres Strait Islander peoples access to the justice system and appropriate representation has been a growing concern for many years and due to recent developments this has become an area of high priority.

There remains strong links between Aboriginal and Torres Strait Islander women's experiences with family, domestic and sexual violence and their interactions within the justice system. It is also becoming evident that the criminalisation of women as victims in the judicial process is on the rise.

There are various types of legal services that are available across the country and vary from state to state. There are also a small number of services that focus on specific and cultural needs of Indigenous women. In particular there are state based Aboriginal and Torres Strait Islander women's legal services, the Family Violence Prevention Legal Service and the Aboriginal and Torres Strait Islander legal services.

## Aboriginal and Torres Strait Islander legal services

In December 2013, the government announced that \$43.1 million was to be cut across the legal assistance sector over the next four financial years. Further to this, the Attorney-General's department has confirmed that \$13.34m will be cut from the Indigenous Legal Aid and Policy Reform Program which funds Aboriginal and Torres Strait Islander Legal Services (ATSILS), over the next four financial years. While the Attorney-General has stated that these cuts will only target law reform and advocacy activities, in reality the impact of these cuts will be felt far more broadly across the full range of frontline service delivery areas. It will defund the national peak body for ATSILS and will force individual ATSILS to withdraw services across all areas of law, including civil, family and criminal law, as well as the complete closure of entire offices.<sup>7</sup>



## Women & family violence prevention legal services

Family Violence Prevention Legal Services (FVPLSs) were established in recognition of:

- the gap in access to legal services for Aboriginal victims/survivors of family violence and sexual assault;
- the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS); and
- high rates of family violence in Aboriginal communities.

The necessity for such services continues to increase, however in recent budget announcements there will be significant impact on the crucial services and provision of assistance provided across the Family Violence Prevention Legal Services. Approximately \$3.6m is to be cut from an already under-resourced service. The program itself is only a \$20m program nationally so these cuts will have major impacts on the capacity to respond to increasing demands and to continue to protect the interests of Aboriginal and Torres Strait Islander women who are experiencing family violence.

As a human rights issues it remains fundamental to provide holistic and appropriate services to Aboriginal and Torres Strait islander women regardless of whether they live in urban, rural, regional or remote locations. Recent restrictions placed on national FVPLS programs to not provide services to women living in urban areas, is evidence that the program is treated as supplementary rather than a primary service to Aboriginal and Torres Strait Islander women and children. It also places these women at a greater disadvantage as they are unable to access other culturally safe legal service to due to legal conflicts of interest.

Furthermore the importance of self-determination and community led strategies for addressing family violence must be recognised and valued by all levels of government.<sup>8</sup>

## Indigenous family violence legal services

There has not been enough of a focus from Australian governments on providing Indigenous people with access to civil law services. Aboriginal and Torres Strait islander peoples (particularly women) in rural, regional and remote communities have very little knowledge about their civil law rights. Therefore there is an increasing need for ongoing, continuous legal support in these communities. Clients need to be guided through the whole process which involves ongoing practical as well as legal support.<sup>9</sup>

### Service delivery

Isolation of many Indigenous communities (rural, regional and remote) imposes a significant hurdle to servicing communities. Many Legal services do not have the resources to provide on the ground full-time services to these communities, leading to greater vulnerability amongst victims (predominately women). In addition technological service provision, such as the phone and the internet, allows for minimalist communication. However this is not an adequate provision of service, as many clients need to build a rapport with the legal and support staff, and be assured of privacy and confidentiality.<sup>10</sup>

### Court diversion

In response to the recommendations by the Royal Commission into Aboriginal Deaths in Custody, a range of culturally appropriate and diversion options for Indigenous offenders have been implemented around Australian. In particular, this has included Indigenous sentencing courts, such as the 'Murri Court'. While this was in part an attempt to address the over-representation of the Indigenous population in prisons, the overall aims were much broader including creating opportunities for Indigenous Elders and communities to participate in justice processes. Of great concern is the recent decision by the Queensland government to cancel a range of diversion courts which will particularly affect Indigenous women. The cancellation of the Murri court undermines 15 years of relationship building between the justice system and the Indigenous population and still fails to address the concerns of over-representation of Indigenous women in prisons.

## Risk factors in the lives of Indigenous women and girls

While the reasons for the over-representation of Indigenous women in prison are complex, the factors which contribute to this are owed to both the historical abuse of Indigenous people, as well as their current social and economic disadvantage within Australia. A majority of Australia's Indigenous population live in low socio-economic areas have high unemployment and many live in poverty. This is a well-known risk factor for offending and while Indigenous populations demonstrate a high rate of offending, they also show a corresponding high rate of victimisation. There are high rates of domestic violence, child abuse and sexual abuse of both women and children within many Indigenous communities.

The effects of repeated victimisation are well documented and can lead to low self-esteem, anxiety, depression, other mental health issues and substance abuse. These factors are all correlated with increased risk of offending and in the case of substance abuse can constitute an offence in itself. Therefore many Indigenous women and girls are not only stuck in cycles of abuse as victims, but also get stuck in cycles of offending in an effort to cope with their difficult life situations.<sup>11</sup>

## Over policing

It has been well recognised that Indigenous communities are over-policed, and the impact of this on Aboriginal and Torres Strait Islander women was highlighted by the 2001 report by the Aboriginal Justice Advisory Council (AJAC).

*“The study also found that in 10 areas in NSW with high Indigenous populations, Aboriginal women were locked up for intoxication at 40 times the rate of non-Aboriginal women and that detention for outstanding warrants was ... 16.5 times for Aboriginal women.”*

Whilst this report is somewhat dated the increasing rates of Indigenous women in incarceration continue to rise. The national imprisonment rate for Indigenous women has rocketed up by 86 per cent in the past decade. While there are many factors that affect these alarming statistics, the increased presence of police, and over policing on Indigenous people is a significant issue.<sup>12</sup> The effects of over policing, while intended to reduce crime in these communities or make them safer to live in can consequently create a net-widening effect. There are many low level crimes that are often undetected and untargeted in white communities, however net-widening often results in these crimes being detected and charged within Indigenous communities. In addition, increased interaction with the police increases the risk that charges will become escalated with an individual also being charged with resisting arrest, assaulting police or find themselves under greater scrutiny for minor offences, such as unpaid fines. The AJAC highlights the over use of “move-on” powers and arrest powers for intoxication with Indigenous people, which has the net result that Indigenous women are more likely to receive criminal charges as a consequence of systemic differences.

## Criminalisation of victims

As mentioned above, Indigenous women are frequently the victims of family violence and may be stuck in a cycle between victimisation and offending. This can create dangerous situations whereby they are fearful to contact police during incidence of family violence. When police attend these incidents they may charge the women with assault, based on her attempts to defend herself. Similarly if she has pre-existing charges which have not been resolved then she may be arrested also. As indicated by the AJAC report, Indigenous women are then 16.5 times more likely to be detained for an outstanding warrant. Therefore Indigenous women may be too fearful to contact the police and the vicious cycle is perpetuated.





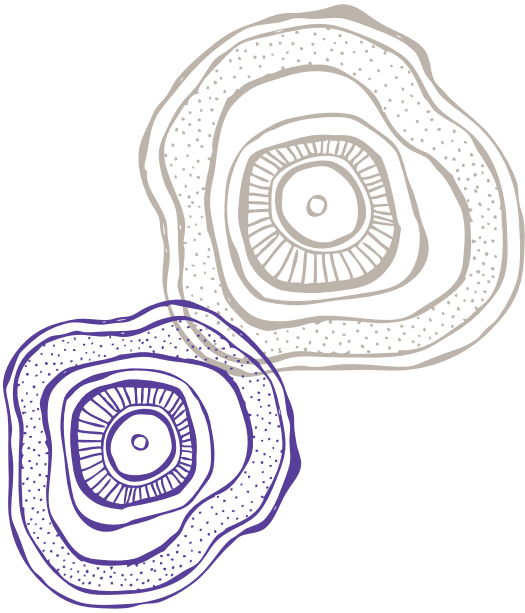
## Recommendations proposed for concluding comments

- 15.1** That the Australian Government commits to adequately funding cultural and gender specific legal services including the provision for rural, regional and remote servicing.
- 15.2** That the Australian Government re-funds specialist and diversion courts (across all jurisdictions) including Murri Courts.
- 15.3** That the Australian Government adequately resource diversion courts to ensure that there are appropriate and effective programs available to receive referrals from specialist courts on behalf of Indigenous female offenders.
- 15.4** That the Australian Government expand diversion programs available to police to divert Indigenous women and girls, that are both culturally and gender appropriate.
- 15.5** That the Australian Government commit to complying with and enforcing international human rights instruments.
- 15.6** That the Australian Government fulfil their international obligations by developing collaborative sustainable funding models to support Aboriginal community controlled agencies that provide legal and other support services to Aboriginal victims/survivors of family violence in urban, rural and remote areas, and cease shifting responsibility between various levels of government.
- 15.7** That the Australian Government adopts special measures in consultation with Aboriginal peoples to address the significant ongoing disadvantage of Aboriginal and Torres Strait islander women and children that perpetuates rates of family violence.
- 15.8** That the Australian Government provides ongoing support for evidence based, effective community-led interventions for Aboriginal and Torres Strait Islander women and children. Furthermore the Australian Government must work in partnership with Aboriginal and Torres Strait Islander communities to develop effective consultation and engagement processes to ensure informed policy and program development.
- 15.9** That the Australian Government works collaboratively with across all levels of government and community legal sectors to develop a framework to address the over-representation of Aboriginal and Torres Strait Islander women in the criminal justice system. Including data collection, reporting, community support, diversionary programs and other community based solutions.



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