



*Winner, National Human Rights Award 2001*  
*Winner, National Violence Prevention Award 1999*  
*Winner, Tasmanian Women's Safety Award 2008*  
*Certificate of Merit, Australian Crime & Violence Prevention Awards 2008*  
*Nominee, French Republic's Human Rights Prize 2003*  
*Nominee, UN Millennium Peace Prize for Women 2000*

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**WWDA Submission to the Attorney General's Department on The Australian Government Attorney-General's Department Background Paper on "A New National Human Rights Action Plan for Australia"**

Dear Attorney-General McClelland,

Women With Disabilities Australia welcomes the opportunity to comment on the Background Paper, issued by the Attorney-General's Department in December 2010, outlining the strategy for the development of a "A new National Human Rights Action Plan for Australia".

**1. About Women With Disabilities Australia**

Women With Disabilities Australia (WWDA) is the peak organisation for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities. It is the only organisation of its kind in Australia and one of only a very small number internationally in that it operates as a national disability organisation; a national women's organisation; and a national human rights organisation. WWDA represents more than 2 million disabled women in Australia. WWDA is inclusive and does not discriminate against any disability. The aim of WWDA is to be a national voice for the needs and rights of women with disabilities and a national force to improve the lives and life chances of women with disabilities. WWDA addresses disability within a social model, which identifies the barriers and restrictions facing women with

disabilities as the focus for reform. More information about WWDA can be found at the organisation's extensive website at: [www.wwda.org.au](http://www.wwda.org.au).

## **2. Background**

WWDA endorses the Government's commitment to the establishment of a National Human Rights Framework through which the human rights of women with disabilities can be promoted, strengthened and protected. We believe that a well-structured and comprehensive National Human Rights Action Plan (NHRAP) is an integral, essential component of the Framework.

## **3. Need for an Action Plan**

WWDA believes that Australia's increased engagement with the UN reporting processes is commendable. Being a State Party to seven of the eight UN Human Rights instruments means that there is an ongoing reporting obligation, resulting in regular generation of Concluding Comments/Observations from each of the treaty body's monitoring committees. In addition the Australian Government engages in other UN human rights processes such as the Universal Periodic Review. All this activity requires systematic coordination for which a NHRAP is essential. A new NHRAP is also necessary to ensure efficient monitoring of Australia's compliance with all treaties and ensuring that all committees' recommendations are implemented.

More importantly a NHRAP will be an underpinning scaffold which will enable the Government to measure progress in implementing a human rights agenda in both civil and political as well as economic, social and cultural aspects of Australian society. Application of a human rights lens to all legislation, policies and programs must occur irrespective of our international declaration of commitment to human rights at the UN.

## **4. History of Action Plans in Australia**

WWDA has been involved in contributing to the development of previous Action Plans and its submission to the 2004 Action Plan can be viewed at: <http://www.wwda.org.au/humrightplan.htm>. The recommendations contained in WWDA's 2004 submission remain valid in 2011 and are contained in Appendix 1 of this paper. Lack of Government will in implementing these recommendations, at least in respect of people with disabilities, has meant that women with disabilities have remained disadvantaged, poor, abused and marginalised, with frequent and serious breaches of their human rights going unaddressed by successive governments.

It is essential that these recommendations, based on Human Rights principles (and the Vienna Declaration and Programme of Action (Part 11, Para. 71)), and articulated in the guidelines provided by the UN in the

Office of the High Commissioner for Human Rights *“Handbook on National Human Rights Plans of Actions”* be followed in the development of the new NHRAP.

WWDA itself has adhered to a Human Rights Action Plan structure in all its submissions to Government. The WWDA submission to the National Human Rights Consultation in 2009 related all the breaches of the human rights of women with disabilities in terms of UN Human Rights treaties. In consequence, this document was accepted by the CEDAW Committee as an NGO Shadow Report to the 2010 46th CEDAW session reporting process.

There seems to be both NGO and Government agreement that the Government National Human Rights Action Plans of 1995 and 2004 failed to bring about changes in the human rights status of vulnerable groups in Australian society. The new NHRAP must be thoroughly and painstakingly developed, in order that the mechanisms for its rigorous implementation can be properly set up and funded. There must be adequate time for NGO input to its development.

Although WWDA agrees that the earlier plans did fail, it urges that a proper analysis of the factors which caused these failures would be instructive in ensuring that the mistakes are not repeated in the development, implementation and monitoring of the new NHRAP, e.g. the 2004 Plan did not undertake measures to address systemic breaches of human rights and its lack of progress was not monitored or reported on.

**Recommendation 1:**

Undertake an analysis of the factors which caused the failure of the 1995 and 2004 plans, and ensure that a robust monitoring and reporting process is integral to the new NHRAP.

**5. Development of the Action Plan**

WWDA is pleased to note that the new NHRAP is stated to be: *“A comprehensive assessment of human rights needs in Australia, which is then translated into specific goals and practical actions...”*.

However, WWDA has grave concerns that the timeframe proposed for the development of the plan dooms it to a fate of failure similar to that experienced by both the 1995 and the 2004 plans. Although the UN Handbook *“emphasises that countries should find a common-sense solution to preparing the study so that it does not delay development of the action plan”*, this does not mean that a tight timetable should be adhered to at the risk of rendering the whole Plan ineffective.

**Recommendation 2:**

WWDA believes that the current timeline, calling for release of both the Draft NHRAP and a Baseline Study by April 2011 is too rushed, and recommends that this timeline be extended, with subsequent delay to all other dates.

WWDA is concerned that the current suggestion to complete a “Baseline Study” by the end of April is counterproductive. Although the term is used in the UN Handbook, WWDA suggests that the words “Baseline Study” are misleading. In fact, all that can be presented initially is an amalgamation of all available information from existing data sources, for example from the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW). This “Existing Data Study” is a complex exercise, and must be comprehensive. Importantly it must also identify the gaps where data is lacking. In addition much of the Existing Data contains information which is never publicly reported, such as providing gender disaggregated figures. WWDA urges that, wherever possible, Existing Data must be presented in a form showing disaggregation by gender. Where the collection method allows, disaggregation to show any minority group such as Indigenous Australians must also be included. The Existing Data Study also needs to be informed by the 2009 National Human Rights Consultation report. Gaps thus identified, e.g. the lack of basic information about women with disabilities and the need for a comprehensive assessment of their situation in Australia, should then form a target for the NHRAP.

**Recommendation 3:**

All currently data used in the Existing Data Study (or Baseline Study) must be presented in a form disaggregated by gender so that disparities in the situation for men and women can be readily seen.

**Recommendation 4:**

Identified gaps in current data combined in the Existing Data Study should form a target for implementation actions undertaken in the NHRAP.

**Recommendation 5:**

All currently existing data used in the Existing Data Study must be presented in a form disaggregated by sub-groups so that disparities in the situation for minority groups can be readily seen.

WWDA endorses the components of a NHRAP as per the OHCHR Guidelines, listed in the Background Paper as:

- quality consultation involving NGOs and government agencies
- a baseline study
- a comprehensive approach embracing human rights standards, including civil, political, economic, social and cultural rights
- goals, objectives, activities, performance indicators, targets and benchmarks
- management structures and responsibilities, and
- monitoring processes, including timeframes.

Whilst WWDA agrees, in principle, that *“there is little utility in a plan that tries to reformulate or duplicate the objectives and monitoring arrangements for [other arrangements Australia already has in place to protect human rights and improve social inclusion]”*, it is essential that the NHRAP has the overarching structure which enables all objectives and monitoring arrangements to be harmonised. At present, objectives and monitoring arrangements have been drawn up in individual exercises, and it would be beneficial to make adjustments necessary to achieve a uniform approach.

**Recommendation 6:**

The NHRAP coordinates and harmonises all objectives and monitoring arrangements for all human rights and social inclusion commitments and initiatives.

WWDA recognises that not all breaches of human rights will be rectified in the life of the next NHRAP and agrees that *“the plan’s final form and content ...should focus on a discrete number of achievable targeted initiatives”*.

One method of identifying targets has been outlined at Recommendation 4. A second method of selecting actions to include should take into account the longevity of any identified breach, and the consistency of its mention in UN committees concluding comments. WWDA believes that the enactment of legislation *“prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent”* (CEDAW Concluding Observations, Australia, July 2010, Para.43) has been called for by a number of UN agencies, and is mentioned in the Concluding Comments of a number of UN Human Rights Committees as well as by a number of different NGOs over at least a decade, and would fit the above criteria.

**Recommendation 7:**

The NHRAP should contain a discrete number of achievable targeted initiatives chosen for their cost effectiveness of implementation and the longevity and intensity of mention of any identified breach of human rights.

The work that has been done since 2007 to develop long term action plans in a number of areas, e.g. the National Plan to Reduce Violence Against Women and their Children, and the National Disability Strategy is commendable. However, the most important aspects of these plans is in their implementation and the monitoring of progress. Monitoring and implementation of the NHRAP will likewise be a crucial factor in its success.

**6. Governance**

WWDA agrees that it is appropriate that the Commonwealth Attorney-General oversees the project, and that a committee of senior officials from all relevant Australian Government departments steer the project. However, there is an urgent need for the steering committee to also include representatives of the wider community. Organisations such as the Australian Forum of Human Rights Organisations or the Human Rights Law Reform Centre should also be represented to act as liaison agents with NGO human rights. Although such representation will need to be properly funded, this will present a cost-effective way of maintaining contact and enabling a flow of feedback from these organisations to inform the plan development.

Wide consultation is also necessary to ensure that the Existing Data (or Baseline) Study is sufficiently comprehensive, and this may not be achievable unless the DRAFT Study is made available to community human rights NGO organisations for feedback. Coordination of the feedback, including the ability to hold face to face consultations, should be properly funded.

WWDA is concerned that State and Territory governments have not been adequately involved in the initial stages of the NHRAP development, and is further concerned that consultation with a range of Commonwealth parliamentarians has not yet been undertaken. It is essential that the NHRAP process and accountability mechanisms are institutionalised through legislation so that they will endure irrespective of the balance of power in the Parliament. Consultation with all levels of government and with independent parliamentarians in the Australian Parliament is urgently needed in this initial stage. This is a further argument for expanding the timeframe for all milestones as per Recommendation 2.

WWDA notes that the Attorney General intends to give participants in the May/June Human Rights forum an opportunity to discuss the NHRAP. Whilst this will provide some valuable feedback, the nature of the forum does not provide an opportunity for the in-depth scrutiny which the plan warrants.

**Recommendation 8:**

The steering committee overseeing the project needs to be expanded to include community human rights NGO representatives, and their participation properly funded.

**Recommendation 9:**

A DRAFT Existing Data (or Baseline Study) under development by the Attorney General's department should be made available to relevant NGOs and other stakeholders to give feedback through properly funded consultations.

**Recommendation 10:**

In-depth consultation with State/Territory governments and independent Commonwealth parliamentarians must be undertaken to obtain their support for the concept of a NHRAP.

**Recommendation 11:**

The NHRAP must be future-proofed through enactment of appropriate legislation on both the process and accountability mechanisms

## **7. Implementation, Oversight and Monitoring**

One important facet of the Governance of the NHRAP is in its Implementation, Oversight and Monitoring. The monitoring body set up needs to include representatives of NGOs and State/Territory governments, rather than the narrower inter-departmental Steering Committee currently overseeing the Project. The monitoring should be undertaken by a specifically convened group with a high degree of independence from those undertaking implementation and oversight, and be adequately resourced for the task. The Australian Human Rights Commission has the expertise to have the overarching coordination of such a monitoring committee.

**Recommendation 12:**

The NHRAP warrants the appointment of a Minister expressly responsible for Implementation and Oversight of the National Human Rights Framework including the NHRAP. An Annual Report to parliament on the operation and progress of the Framework must be given.

**Recommendation 13:**

Monitoring of the NHRAP must be done by a group set up specifically for the task, independent from those responsible for implementation and oversight, and appropriately funded.

**Conclusion**

WWDA endorses the general principles set out in the Background Paper and looks forward to further contributing to the development of the National Human Rights Action Plan, and to participating in all stages of its implementation, in order to address the past neglect of women with disabilities, to rectify ongoing, long-term breaches of their human rights, and improve their ability to participate in all aspects of Australian society.



## APPENDIX 1

### Submission to the Australian Government on the Draft National Action Plan on Human Rights (July 2004)

#### Recommendations

1. WWDA recommends that the Australian National Action Plan on Human Rights be developed in accordance with the Vienna Declaration and Programme of Action (Part 11, Para. 71). Inherent in this is the commitment for States to identify steps whereby that State would improve the promotion and protection of human rights.
2. WWDA recommends that the Australian National Action Plan on Human Rights provide a clear and frank assessment of the current human rights situation in Australia, including baseline and disaggregated data and an assessment of Australia's human rights performance by relevant United Nations Human Rights Treaty bodies.
3. WWDA recommends that the human rights priority areas in Australia's National Action Plan on Human Rights be identified through a process of consultation with all relevant stakeholders and following an assessment of the current human rights situation in Australia.
4. WWDA recommends that the Australian Government develop the Australian National Action Plan on Human Rights in accordance with the framework set out in the Handbook on National Human Rights Plans of Action (2002) developed by the Office of the United Nations High Commissioner for Human Rights.
5. WWDA recommends that the Australian Government immediately implement a range of inclusive consultative processes to enable meaningful participation by all stakeholders in the development of the Australian National Action Plan on Human Rights.
6. In relation to addressing the human rights of people with a disability within the Australian National Action Plan on Human Rights, WWDA recommends that meaningful consultation occur with the disability sector and other relevant stakeholders as a matter of urgency in order to:
  - Ascertain the current human rights situation for people with disabilities in Australia;
  - Identify what problems need to be overcome;
  - Identify priority areas for action;
  - Specify what action will be taken (in terms that provide benchmarks for the evaluation of progress);
  - Specify who is to take the action;
  - Establish a firm time frame in which action will be taken; and
  - Provide for effective monitoring and evaluation of what has been done.
7. In relation to addressing the human rights of people with a disability within the Australian National Action Plan on Human Rights, WWDA recommends that the Plan:

- a) Include baseline data and an assessment of the current human rights situation of people with disabilities in Australia;
- b) Make explicit recognition of the impact of multiple discriminations caused by the intersection of gender and disability;
- c) Address as a priority, violence against people with disabilities, with particular and urgent attention to the alarmingly high rate of violence against women with disabilities;
- d) Address as a priority, the unlawful sterilization of women and girls with disabilities. This must be done in the context of unlawful sterilization of women and girls with disabilities as an act of unnecessary and dehumanising violence and a gross violation of their human rights;
- e) Address as a priority, the abuse, neglect, mistreatment, and discrimination of people with disabilities living in institutions. At the very least, the Plan should include as a major strategy, a Public Inquiry or Royal Commission into the abuse of people living in institutions, both historically and currently;
- f) Clearly articulate formal support for the development and adoption of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, along with the processes required to enable people with disabilities to participate in the development of the Convention;
- g) Urgently address the over-representation of people with disabilities in the criminal justice system. The Plan should include as a major strategy, an Inquiry into access to justice for people with disabilities, with a particular focus on practical strategies for protecting their rights in the criminal justice system, as recommended by the Productivity Commission in 2003;
- h) Include strategies to address the discrimination experienced by people with disabilities in relation to access to health services in Australia. The Plan should include as a major strategy, the conducting of a Public Inquiry into Access to Breast and Cervical Screening for Women with Disabilities in Australia;
- i) Include as one strategy to assess the human rights situation of people with disabilities in Australia, an independent audit of Australia's compliance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities;
- j) Urgently address the significant problem of unmet need with respect to the provision of support and assistance for people with disabilities in Australia.