



## Submission to the National Human Rights Consultation June 2009

Women's Health Goulburn North East is a feminist, non-government women's health organisation which services the Hume region of Victoria. We receive most of our funding from various sectors of the Victorian Department of Human Services. Our work is underpinned by a social model of health which recognises that a complex array of social, cultural, economic, political and gendered factors influence a woman's sense of health, safety and well-being. We work in partnership with women, service providers, organisations and local communities to achieve sustainable change through advocacy, health promotion, education and research and evaluation. We embrace an approach that respects and affirms women's diversity and that aims to empower the women of the Hume region to achieve equity, safety and well-being.

We are writing in support of a National Charter or Human Rights Act as we strongly believe that human rights are the principles that promote and permit that all people live a dignified life in which their fundamental freedoms are respected and protected. We believe that Australia, as the only liberal democracy that does not have a National Bill of Rights, Charter or Human Rights Act, must move forward to create a human rights charter that is progressive and meaningful. This Charter must safeguard the freedoms of all Australians and those non-citizens who enter our borders, regardless of their racial, cultural or religious background, age, gender, sexuality, disability or socio-economic status.

Women's Health Goulburn North East has five key recommendations for a National human rights charter or bill.

**Recommendation 1:** The right to live free from violence.

Violence, be that physical, sexual, psychological, social, financial or the restriction of religious or cultural practice, is a fundamental violation of a person's human rights. Specifically acknowledging this right is a fundamental step forward in ensuring that gender-based violence "that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"<sup>1</sup> is eradicated in Australia. Violence against women and their children further impinges on their right to health, as violence in any form has serious implications for an individual's physical and psychological health status. It is our view that such acts as domestic and family violence, rape, including rape by a present or former partner, sexual assault, human trafficking, sexual slavery, female genital cutting and forced prostitution, must be specifically named as human rights violations in an Australian context?<sup>2</sup> Indeed, Women's Health Goulburn North East believes it is essential that partner rape be specifically named as a human rights violation. This recommendation is based on independent research conducted by our organisation with 21 women from the Hume region, 23 health professionals and 30 police officers, which found that partner rape occurs across all socio-economic backgrounds and that women experience further disadvantage due to disability or racial discrimination.<sup>3</sup> Although the law was changed in 1985 to criminalise rape within marriage, the attitudes of some men remain in a past where women had little autonomy and men had a sense of entitlement. Today, the attitudes of some community leaders continue to support this misplaced entitlement. We heard from women and health professionals that police, ministers and doctors knew what was happening to these women and did nothing. We heard that women who spoke up would suffer recriminations from their community. And we heard that only six of the 30 police interviewed would advise someone they love to report partner rape. The fact that the perpetrator of rape is often the father of the victim's children complicates a woman's decision to press criminal charges. Including the right of a woman to be free from rape by her intimate partner in a National Human Rights Charter would assist in removing the current complicity of society in keeping this assault hidden.

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<sup>1</sup> United Nations, *The Declaration of the Elimination of Violence Against Women*, United Nations General Assembly, 1994, Article two.

<sup>2</sup> Ibid.

<sup>3</sup> D. Parkinson, *Raped by an Intimate Partner: A research Report*, Women's Health Goulburn North East, 2008, p. 1

**Recommendation 2:** Every person is entitled to all the rights and freedoms set forth in a human rights charter, regardless of their sexual orientation or gender identity.

Everyone should be entitled to all the rights and freedoms set forth under a National Human Rights Bill or Charter, regardless of their sexual orientation or gender identity. Whilst current Commonwealth anti-discrimination legislation covers unlawful discrimination due to one's sex, marital status, race, age or because of disability<sup>4</sup>, the current state of federal law in relation to discrimination based on sexual preference and gender identity is arguably inadequate in ensuring that gay, lesbian, bisexual and transgendered people's human rights are protected.<sup>5</sup> For example, gay and lesbian couples are not recognised under Australian law, are not permitted to marry and currently there is no provision for joint adoption applications for same sex couples.<sup>6</sup> The right to freely express sexual orientation and gender identity would ensure that Australian women who identify as lesbian, bisexual or transgendered and their children will have the right to live with dignity, liberty and security from discrimination.

**Recommendation 3:** The federal Human Rights Charter should extent to non-citizens of Australia.

Women's Health Goulburn North East believes in accordance with The Universal Declaration of Human Rights that everyone who enters Australian borders should have the right to seek and to enjoy asylum from persecution. While many countries detain illegal immigrants for varying periods of time, Australia is the only country where detention is mandatory for adults and children for the duration of processing by the Department of Immigration and Multicultural and Indigenous Affairs<sup>7</sup>. Given that there is an increasing body of medical literature which indicates that women and children being held in detention centres experience a further burden of trauma and poor

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<sup>4</sup> National Human Rights Consultation, *National Human Rights Consultation: Background Paper*, Commonwealth of Australia, 2008, p. 8.

<sup>5</sup> Human Rights and Equal Opportunity Commission, *Discrimination on the ground of sexual preference: Report of Inquiry into Complaints of Discrimination in Employment and Occupation*, Commonwealth of Australia, Sydney, 1998.

<sup>6</sup> J. Millbank 'The De Facto Relationships Amendment Bill 1998', *Australasian Gay and Lesbian Law Journal*, vol. 8, May 1999; W. Rubenstein, 'We are family: a reflection on the search for legal recognition of lesbian and gay relationships' *Journal of Law and Politics*, vol. 8, no. 1, Fall 1991.

<sup>7</sup> J. Phillips. & C. Lorimer, *Children in Detention*, E-Brief Online: Parliament of Australia, November 2005

psychological health<sup>8</sup>, we believe that non-citizens of Australia must be entitled to access the same human rights as Australian citizens.

**Recommendation 4:** Women should have the right to affordable, safe and accessible methods of contraception.

Women should have equity in access to a variety of affordable, safe and accessible methods of contraception. It is our view that without the right to affordable, safe and accessible contraception many disadvantaged and vulnerable Australian women are unable to make autonomous decisions regarding their fertility, including decisions about when and whether to have children, based on their own life situations, personal views and beliefs. Hence, having access to affordable and safe contraception, we believe is a sexual and reproductive health right.

**Recommendation 5:** Women must have the right to reproductive choice and to be supported in the choice they make. A women's right to legal, safe, affordable and accessible abortion should be part of the National Human Rights Bill or Charter.

Additionally, Women's Health Goulburn North East support the fourteen recommendations from Women's Health Victoria, particularly with regards to ensuring that abortion must **not** be expressly excluded in the proposed charter as occurred in Victoria. Women's Health Goulburn North East insists that to do so is to ignore "the right of all women to control all aspects of their health, including their fertility."<sup>9</sup>

**Recommendation 1:** Australia should now move to formally enshrine human rights in one document.

**Recommendation 2:** A dialogue model of human rights should be adopted, in a style similar to the Victorian Charter of Human Rights and Responsibilities.

**Recommendation 3:** A federal charter must contain a clause that states that it is intended to act concurrently with state charters

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<sup>8</sup> S. Mares, L. Newman, M. Dudley, and F. Gale, 'Seeking Refuge, Losing Hope: Parents and Children in Immigration Detention', *Australian Psychiatry*, vol. 10, no. 2, June 2002.

<sup>9</sup> Forth World Conference on Women, *Beijing Declaration and Platform of Action*, Beijing, 1995.

**Recommendation 4:** The rights of all people in Australia must be protected in any federal charter.

**Recommendation 5:** A Human rights Commission should be set up to hear human rights complaints, report on the government's human rights progress and provide training and education.

**Recommendation 6:** A human rights culture should be fostered and encouraged through awareness raising and ongoing human rights education.

**Recommendation 7:** The rights set out in existing international instruments should be used as the basis for any federal charter.

**Recommendation 8:** A federal charter must reflect the indivisibility and interdependence of civil and political rights and economic, social and cultural rights by including both sets of rights.

**Recommendation 9:** A federal charter must include the right to health, the right to an adequate standard of living and the right to social insurance and social security as these rights would help to eradicate discrimination, poverty and violence against women.

**Recommendation 10:** Comprehensive, equitable and accessible sexual and reproductive health services, including termination of pregnancy services, are a human right and must be ensured by a federal charter.

**Recommendation 11:** Abortion must not be expressly excluded in the proposed charter as occurred in Victoria as to do so is to ignore women's rights.

**Recommendation 12:** Life begins at birth and this must be reflected in any right to life clause in the charter.

**Recommendation 13:** Religious rights and conscientious objections should not be privileged and an express provision that outlines the process by which human rights are balanced should be included.

**Recommendation 14:** A limitation to freedom of expression on the grounds of 'public morality' should not be included.

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