WOMEN:

*Their rights in Australia over the past 40 years (1972-2012)*

By Caroline Brentnall
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Introduction

Women make up more than half the Australian population. For every 100 females in the population, there were 99.2 males as of 30 June 2010 (Australian Bureau of Statistics, 2010).

Australia ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1983 and has recently taken steps to implement the Convention’s articles fully, despite previous reservations about particular sections.

Today women are better educated than ever and more of them rather than men complete university degrees, with 54.8% of tertiary students in 2006 being women (Department of Foreign Affairs and Trade, 2011). Despite this, in the workplace, women still face inequalities. More women than men work part-time while more men work full-time. Women are less likely than men to reach management ranks and positions of power within organisations. Also, despite legal cases regarding equal pay, there is still a gender wage gap. Although these legal cases and legislation regarding discrimination, such as the Sex Discrimination Act 1984 (Cth) have afforded formal equality to women, this has not always translated into substantive equality between the sexes.

Furthermore, violence against women, particularly family violence, is a major issue faced by many women today. It is one of the most important health issues for women.

This report looks at women in Australia along with the issues that have affected them over the past 40 years, from 1972 to 2012. The author would like to thank Alison Macdonald from Domestic Violence Victoria and Pauline Gilbert and Victoria from CASA House for their assistance.
Timeline
This timeline shows the events that have influenced and impacted on the lives and rights of Australian women over the past 40 years, from 1972 to today. Items marked with the symbol * indicate those which are also referred to elsewhere in this report.

1972
- *Equal Pay Case (1972) 147 CAR 172* establishes the principle of equal pay for work of equal value.

1973
- Women working in the Commonwealth Public Service receive maternity leave entitlements.
- Women's Electoral Lobby (WEL) established.
- Elizabeth Reid becomes an adviser regarding women’s affairs to the Australian Prime Minister, the first such position established.
- The first women’s shelter in Australia for women leaving violent homes, Elsie Women's Refuge in Glebe, Sydney is opened.

1974
- Australian Conciliation Arbitration Commission abolishes the concept of the family wage.
- International Women’s Day is officially recognised by the Australian Government.
- The first Rape Crisis Centres in Australia are established in Sydney and Melbourne.
- The first women's health centre is opened in Leichhardt, Sydney.

1975
- South Australia’s *Sex Discrimination Act* is passed, Australia’s first sex discrimination legislation. (This Act was later repealed and replaced with the *Equal Opportunity Act 1984 (SA)*).
- International Women’s Year is proclaimed by the United Nations.

1976
- South Australia becomes the first Australian jurisdiction to make rape within marriage a crime. (By the end of the 1980s, it has been made a criminal offence in all Australian jurisdictions).
• Dame Margaret Guilfoyle becomes Minister for Social Security, the first woman to be given a federal cabinet portfolio.

1977

1978

1979
• Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is adopted by the United Nations General Assembly.*

1980

1981
• Sixty-one women arrested in Canberra on ANZAC Day, during a protest about rape in war.*

1982

1983
• Australia ratifies the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).*

1984
• *Sex Discrimination Act 1984 (Cth) is passed.*

1985
• Helen Williams becomes the first female head of a government department at the federal level when she becomes the Secretary of the Department of Education.

1986
• Joan Child becomes the first female speaker in the federal House of Representatives.
• Australian Democrats leader, Janine Haines is the first woman to become the leader of an Australian political party.
• The *Affirmative Action Act 1986 (Cth) is introduced.*

1987
• The first female judge, Justice Mary Gaudron is appointed to the High Court of Australia.*

1988
1989
• Rosemary Follett becomes the first female leader of an Australian state or territory government when she becomes Chief Minister of the Australian Capital Territory.*

1990
• Carmen Lawrence becomes the first female state premier when she becomes Premier of Western Australia. Joan Kirner also becomes Victorian Premier.*

1991

1992

1993

1994
• The Australian Labor Party introduces a quota for women, requiring that 35% of the party's candidates be women.

1995

1996

1997

1998

1999
• The *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* replaces the *Affirmative Action Act 1986 (Cth).*

2000
2001
- Christine Nixon becomes the first woman to head an Australian police force, becoming the Chief Commissioner of Victoria Police.*

2002
- Jenny Macklin becomes Deputy Leader of the Australian Labor Party, the first woman to be Deputy Leader of either of the two major political parties.
- Marion Scrymgour becomes a minister in the Northern Territory Government, the first Indigenous Australian woman to become a minister in any government.*

2007
- Julia Gillard becomes the first female Deputy Prime Minister of Australia.*

2008
- Quentin Bryce becomes the first female Australian Governor-General.*

2009
- Julia Gillard becomes the first female Prime Minister of Australia.*
- Although she had already been Premier of Queensland since 2000, Anna Bligh becomes the first female elected to the position of state premier.*

2011
- The first national Paid Parental Scheme begins.*
- The government announces that over the next five years all roles in the Australian Defence Force, including combat roles, will be opened up to women.*
- Equal Remuneration Case [2011] FWA FB 2700. Equal pay case regarding workers in the social and community sector, is currently before Fair Work Australia.*
International Women’s Day
International Women’s Day is celebrated annually around the world on 8th March after it was first observed in 1911 on 19 March in several European countries (Australian Women’s Register, 2010a). In Australia it was not observed until 1928, when the Militant Women’s Movement held a gathering in the Sydney Domain on 25 March (Australian Women’s Register, 2010a). Issues raised on this occasion included 8 hour days for shop girls, equal pay for equal work and annual holidays for those on full pay (Australian Women’s Register, 2010a). However the day was not officially recognised by the Australian government until 1974 in the lead up to 1975 which was designated as International Women’s Year by the United Nations (Australian Women’s Register, 2010a). Now on 8 March events are organised in each state and territory (Australian Women’s Register, 2010a).

Rape in War Protests
On ANZAC Day 1977, women in various parts of Australia demonstrated against rape in war. Yet neither these demonstrations, nor bigger ones the following year, drew much attention, despite 120 protesters in Canberra lifting a banner reading ‘Women Against Rape’ over people taking part in the official ANZAC Day parade (Morgan, 1996, p64). However following the Canberra demonstration that took place in 1980 when 16 women marched in protest with the official ANZAC Day parade, all but two were arrested and faced court proceedings (Morgan, 1996, p64). These arrests drew attention to the women’s protest, so in the lead up to ANZAC Day 1981 with more women involved in the movement, the RSL became concerned about their plans. There were rumours that they were going to spray paint over the soldiers, they were going to throw themselves down in front of the marchers, “forcing” them to commit symbolic rape’ (Morgan, 1996, p65).

To prevent the women marching in the official ANZAC Day march that year, an ACT traffic ordinance was amended making it a criminal offence to do something likely to cause offence to those participating in an ANZAC Day service (Morgan, 1996, p65). The law came into effect two days prior to ANZAC Day 1981 (Heath, 2000, p18). On ANZAC Day the protesters, their numbers in the hundreds, met in a park in a side street away from the official march route and under a banner that read, ‘In memory of all women of all countries raped in all wars’ marched toward the official parade (Morgan, 1996, p65). However they were intercepted by about 70 police, and sat down where they were in the
street (Morgan, 1996, p65). As a result of this confrontation with police, 61 women were arrested (Morgan, 1996, p65). Later in the day, when all the official ceremonies were over, the women held their own ceremony and laid flowers on the Stone of Remembrance (Morgan, 1996, p65). Following the public attention this 1981 ANZAC Day demonstration attracted, 21 women called a rape crisis centre about their own rapes during war, while three men also called too, admitting that they had committed rape during war ‘and had had official encouragement to do so’ (Morgan, 1996, p65).

In 1982, on ANZAC Day, 750 women gathered to lay a wreath at the War Memorial prior to the official march and then watched the official parade with their banner reading ‘In Memory of all women raped in all wars’ from a hill overlooking the War Memorial, enabling their banner to be seen by all those attending the official ceremony (Sawer, 2008, p18).

**Indigenous Australian Women**

Women who identify as Aboriginal and/or Torres Strait Islander make up 2.3% of Australian women today (Office for Women, 2010a).

Aboriginal and Torres Strait Islander women, in general, suffer more health problems than non-Indigenous women (Department of Health and Ageing, 2008). Indigenous women also have higher likelihood of experiencing violence than other women (National Council to Reduce Violence against Women and their Children, 2009, p9). They are up to 35 times more likely than other women to be hospitalised as a result of family violence (Office for Women, 2010a). Life expectancy for Indigenous women at birth for 2005-2007 is less than that of non-Indigenous women. For Indigenous women it was 72.9 years, while for non-Indigenous women it was 82.6 (Australian Bureau of Statistics, 2009).

While the women’s liberation movement sought to include all women, including Indigenous women in their campaign for equality with men in the 1970s, they failed to see that Indigenous women also faced other issues and had different concerns (Huggins, 1994, p71). While the white women’s movement focused on issues such as differences in education and equal pay, Indigenous women faced other issues which were of greater concern to them, such as having their children taken away from them and dispossession (Huggins, 1994, p71).
The first Indigenous Australian woman to be elected to a United Nations body, Megan Davies, was elected to the United Nations Permanent Forum on Indigenous Issues for a three year period beginning this year (ANU News, 2010).

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The CEDAW is the main international instrument that aims specifically to protect the rights of women and was adopted by the United Nations General Assembly in 1979 (United Nations, 2011). There are currently 186 state parties to the CEDAW (United Nations, 2011). Although Australia ratified CEDAW on 28 July 1983, it had reservations regarding sections relating to maternity leave and women being able to serve in combat roles in the defence forces (United Nations, 2011). Australia is legally bound to implement the articles of the Convention and is required to report every four years on the progress the country has made in meeting these commitments (United Nations, 2009). Particular areas needing improvement in Australia were pointed out by the CEDAW Committee in 2006. These included:

- The need for increased involvement of women, especially Indigenous women and those from ethnic minorities in decision making bodies, in the political and public sphere
- High rates of violence against women, and the relatively low level of reporting, prosecuting and conviction in cases of sexual assault
- The need for a thorough approach to tackle trafficking and exploitation of women for prostitution
- Negative gender-specific impacts of policy and law on female refugees and asylum-seekers
- No national paid maternity leave scheme
- Difficulties for rural women in accessing health services
- Multiple types of discrimination that may be faced by female ethnic minorities, refugees and migrants
On 24 November 2008, the Australian government assented to the Optional Protocol to CEDAW, allowing women in Australia to make complaints directly to the United Nations Committee on the Elimination of Discrimination against Women from March the following year (Rimmer, 2010, p296). Also, with the introduction of the Australian government’s paid parental leave scheme which commenced on 1 January this year and the more recent announcement that all military roles, including combat roles, in the Australian Defence Forces would be opened to women over the next 5 years, Australia can now wholly comply with CEDAW (Oakes, 2011, p1).

**Sex Discrimination Act 1984 (Cth)**

The federal *Sex Discrimination Act 1984* (SDA) is based on the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) to which Australia is a signatory. However it departs from the CEDAW in that it is written in gender neutral terms, thus making it possible for both Australian women and men to make complaints of discrimination on the basis of their sex under the Act to the Australian Human Rights Commission (Thornton, 1994, p216).

The aim of the SDA is to ‘promote gender equality’ through the elimination of ‘discrimination and sexual harassment’ in Australian society (Australian Human Rights Commission, 2011a). Under the Act, discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy, breastfeeding and family responsibilities, and sexual harassment is unlawful in many areas of public life such as employment, education, the provision of goods and services, accommodation, land, clubs, and the administration of Commonwealth laws and programs (s3, Sex Discrimination Act 1984 (Cth)). However discrimination on the grounds of family responsibilities only applies to the employment context (s3(ba), Sex Discrimination Act 1984 (Cth)). Each of the various states and territories also has its own similar legislation relating to sex discrimination (see Discrimination Act 1991 (ACT), Anti-Discrimination Act 1977 (NSW), Anti-Discrimination Act (NT), Anti-Discrimination Act 1991 (Qld), Equal Opportunity Act 1984 (SA), Sex Discrimination Act 1994 (Tas) Equal Opportunity Act 1995 (Vic), and Equal Opportunity Act 1984 (WA)). All these acts work on the concept of formal equality, that of treating all people the same, despite whatever differences may exist between different people (Thornton, 1994, p215). For example, this means that all people, who are qualified for a
particular job have equal access to that job when it is advertised. It is envisaged that if men and women have the same access to a particular job, that in time this will eventuate in equal numbers of men and women doing the job. This equality in outcome is known as substantive equality, but it has not yet occurred in employment.

However the Act has been criticised by Elizabeth Evatt, Australia’s first representative elected to the United Nations Human Rights Committee, who stated that the definitions, restrictions and exceptions, such as for religious organisations, under the SDA made the Act too narrow to combat systematic discrimination (Rimmer, 2010, p299).

The SDA is not proactive, requiring the victim of discrimination or harassment to make a complaint. Complaints of direct or indirect discrimination can be made under the Act. Direct discrimination, in relation to sex, is where a person is treated less favourably than a similar person, in the same situation, of the opposite sex (Ronalds, 2008, p32). While indirect discrimination is where:

a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of the sex of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same sex as the aggrieved person (s 5(2), Sex Discrimination Act 1984 (Cth)).

The concept of indirect discrimination was developed to combat discrimination which is systematic and covert and cannot be categorised as direct discrimination (Thornton, 1994, p218). However, for the complaint of indirect discrimination to be made there still requires the identification of an individual ‘wrongdoer’ deemed responsible for the harm caused by the discriminatory practice (Thornton, 1994, p218). This can make it difficult to make a complaint of indirect discrimination under the SDA, as ‘systematic discrimination, by its very nature, is diffused throughout the entire psycho-social fabric of society, either to personify or individualise its perpetration is necessarily an artifice’ (Thornton, 1994, p218).
As the legislation prescribes a complaint based process for dealing with instances of discrimination, it works in a reactive rather than a proactive way to combat discrimination. Also, for any action to be taken, the person who has been discriminated against is required to make a complaint to the Australian Human Rights Commission (Thornton & Luker, 2010, p30).

When complaints are made to the Australian Human Rights Commission, the Commission will then direct the parties involved in the complaint to compulsory conciliation conference (s46PJ, Australian Human Rights Commission Act 1986 (Cth)). Conciliation is a private, confidential, free, quick and flexible method of trying to find a resolution between the parties (Thornton, 2010, p149). However if the parties are unable to reach agreement at conciliation, the complainant can then take their case to the Federal Court or the Federal Magistrates Court (Australian Human Rights Commission, 2011b). Unlike conciliation, taking the matter to court can be a lengthy and costly process and an onus of proof will be placed on the complainant (Thornton, 2010, 135). Taking the matter to court when the respondent is a large organisation with many resources may be difficult for an individual complainant. However the majority of cases do not proceed to the hearing stage from the conciliation stage. Only 1.8% of complaints made under the SDA, to the then Human Rights Equal Opportunity Commission, in the 2007-2008 financial year proceeded to the formal hearing stage (Thornton, 2010, p135). On the other hand 53% of all finalised complaints were conciliated (Australian Human Rights Commission, 2011b). Of the total 438 complaints under the SDA that were received by the Australian Human Rights Commission in that year, 421 were finalised (Australian Human Rights Commission, 2011c). The most common ground for these complaints was sex discrimination (47%), the overwhelming majority of which were in the area of employment (87%) (Australian Human Rights Commission, 2011c).

It was hoped that the effect of the SDA would be that complaints made under the Act, once settled, would have a trickle on effect of changing social culture to create a society where discrimination is less likely to occur and where there would be more equality between men and women (Thornton, 2010, p134). However the private nature of conciliation, the process by which most complaints are settled, means this is unlikely.
Jobs For Women Campaign

Traditionally, women were not employed in particular occupations typically seen as men’s work, such as mining. However in the 1970s, a group of women launched the Jobs For Women Campaign, which was aimed at getting Australian Iron and Steel, part of BHP, to alter their practice of employing only men in steelworker positions (Australian Women’s Register, 2010b). Women were only employed in ‘women’s jobs’, as cleaners, typists and canteen workers (Green Left, 1994).

As part of their campaign the women dressed as men, chained themselves to the fence at the steelworks and gave out leaflets (Australian Women’s Register, 2010b). As a result of their campaign BHP began putting on females as steelworkers (Australian Women’s Register, 2010b). Yet while over 4000 iron workers were hired by Australian Iron and Steel between June 1977 and April 1980 only about 1% were female (Green Left, 1994). Australian Iron and Steel had separate waiting lists for men and women waiting for work with the company when positions became available. In 1980 there were 47 applicants waiting for a position on the men’s waiting list, the longest any of them had been waiting being 10 weeks, while of the more than 2000 applicants on the women’s list some had been on it for 7 years (Green Left, 1994).

In April 1980 those 2000 women looking for work in the steelworks made official complaints to the NSW Anti-Discrimination Board (The National Legal Eagle, 1995, p7). With the support of the industry’s union, the Federated Ironworkers Association, over 2000 male steelworkers signed the women’s petition, some making donations to their cause, while more women joined the ranks of complainants who, many of them being migrants, circulated pamphlets in five different languages and demonstrated outside the steelworks, to receive community support (Green Left, 1994). BHP relented in November of the same year and employed all the complainants (Green Left, 1994).

Yet a few years later, BHP began reducing its workforce at the steelworks, using a ‘last on, first off’ policy and as a result, most of the women who had been hired following BHP’s decision to employ women in 1980 lost their jobs (Green Left, 1994). Some of these women made new complaints to the Equal Opportunity Board, ‘claiming compensation for the years they had been on the company’s waiting list but not employed because of discriminatory hiring practices, and alleging indirect discrimination.
in their retrenchment since they had missed out on seniority only because of the original discrimination in hiring' (Green Left, 1994). During the conciliation process the two parties could not come to an agreement (Green Left, 1994). If the women had continued with their complaint they would have to take it to court, which they could not afford, being refused legal aid funding for their case as it would be a test case where the chances of success were unknown (Green Left, 1994). The women continued to campaign for 2 years until the Premier, Neville Wran intervened on their behalf to obtain legal aid for them (Green Left, 1994). In 1985 the Equal Opportunity Board found in favour of the 34 complainants, who were granted $1.4 million in damages (The National Legal Eagle, 1995, p7). Although BHP then appealed the decision, the NSW Court of Appeal upheld the Equal Opportunity Board’s decision in 1989 (Green Left, 1994). Once more BHP appealed, this time to the High Court but again the original decision was upheld (Australian Iron and Steel Pty. Ltd. v Banovic [1989] HCA 56, (1989) 168 CLR 165).

Following this landmark case, many more women have made complaints of sex discrimination against BHP in relation to its hiring policies of the 1970s and 1980s (Green Left, 1994). By February 1994 all the 743 complaints made against BHP were settled, with BHP paying out over $4 million in damages to the women (The National Legal Eagle, 1995, p6).

**Double Shift**

Traditionally there has been a division of labour between the sexes, with men associated with the public sphere, being in the paid workforce in their role as ‘breadwinner’, while women have been associated with the home, in their performance of the unpaid domestic tasks of housework and caring for children and sick family members. However even though the paid work done by women has increased over the past few decades, women still perform the majority of unpaid domestic work (Easteal, 2010, p3). This dual workload has been termed the *double shift*. Women tend to do more unpaid domestic work than men irrespective of whether they are in the paid workforce, work part-time or full-time. Nevertheless the time men spend on tasks such as shopping, cooking and doing laundry has increased a little since 1974 (Burns, 1994, 274). A survey in 1987 found that on marriage the amount of unpaid domestic work done by a woman increased. If she had lived alone prior to marrying, it increased by about 11 hours a week, while if she had been living with others before marriage her unpaid domestic
workload increased by about 14 hours a week and if living with her parents prior to marriage, it increased by more than 21 hours a week (Burns, 19994, p274). However, on the other hand when men married the amount of unpaid domestic work that they did decreased slightly (Burns, 1994, p274).

Aside from marriage, another factor which further influences the difference between the sexes in the amount of time spent doing unpaid domestic work is the birth of children. Women aged between 20 and 49 who were in a couple relationship and had children did about 29 more hours of unpaid domestic work a week than their counterparts who did not have children in 2006 (Easteal, 2010, p4). Although the amount of time men spent doing unpaid domestic work following having a child also increased, this consisted mainly of direct childcare (Easteal, 2010, p4).

The amount of unpaid domestic work women do is influenced by the hours they spend in the paid workforce. The more they participate in the paid workforce, the less time they spend on unpaid domestic work. In coupled relationships, women who are not in the paid workforce spend the most time, averaging 76.5 hours a week, doing unpaid domestic work (Craig, Bittman, Brown & Thompson, 2006, p21). Women in part-time employment spend on average about 69 hours a week and those who work full-time do on average approximately 57.25 hours a week on unpaid domestic work (Craig, Bittman, Brown & Thompson, 2006, p21). Women who work more than 49 hours a week in paid employment do on average about 54 hours of unpaid domestic work (Craig, Bittman, Brown & Thompson, 2006, p21). In these coupled relationships, where the man works full-time, regardless of the time his female partner spends in paid employment, he spends approximately only 30 hours a week doing unpaid domestic work (Craig, Bittman, Brown & Thompson, 2006, p21). Even in relationships where the man does not work full-time, he still does about 22 hours less unpaid domestic work than the woman of the household (Craig, Bittman, Brown & Thompson, 2006, p21).

Paid Work
As of January 2008, just under 4.8 million Australian women were in paid work (Department of Foreign Affairs and Trade, 2011). Although in 1978 only 43.5% of Australian women participated in paid employment, this rate had increased to 58.7% by June 2009 (Office for Women, 2010, p5). While 57% of Australia’s public service
employees are female, about 30% of small business operators in Australia are women (Department of Foreign Affairs and Trade, 2011).

There are differences in the patterns of women and men’s employment. More men work full time than women and more women work part-time than men. While 84.1% of men work full time, only 54.9% of women do, with women making up more than 70% of part-time employees (Office for Women, 2010b, p5-6). Another difference is that between 25 and 40 years of age, the rate of women’s participation in paid employment drops noticeably while men’s does not change (Office for Women, 2010b, p6). These differences result from women’s role as usually the primary caregivers for children, reducing their ability to participate in paid employment. The proportion of employed women who worked part-time in 2006 was 41%, which was much higher than the average of 26% for Organisation of Economic Cooperation and Development (OECD) countries (Easteal, 2010, p5).

However another difference between women and men’s paid work patterns is that the Australian workforce is highly occupationally segregated. Women are associated with and more frequently work in clerical, retail and community service positions, while men are more often associated with and work more as, technicians, drivers, labourers and in the trades (Office for Women, 2010b, p6). The rate of occupation segregation between the sexes in Australia is one of the largest in the world (Green Left, 1994).

**Wages**

Despite several test cases on equal pay in the past, there is still a discrepancy in earnings between men and women. A test case in 1969 established the principle of equal pay for equal work, meaning that women doing the same work as men were to receive the same award wage (Equal Pay Case (1969) 127 CAR 1142). However this decision had no effect on wages in occupations which were female dominated, as in these areas, women’s work could not be compared to a male benchmark (Human Rights and Equal Opportunity Commission, 1998, p35). In 1972, another test case before the Commonwealth Conciliation and Arbitration Commission took place. On this occasion the Commonwealth Conciliation and Arbitration Commission stated that about only 18% of working women’s pay had become equal to men’s as a result of the earlier 1969 case (Equal Remuneration Case [2011] FWAFB 2700). The 1972 decision established the
principle of equal pay for work of equal value (Equal Pay Case (1972) 147 CAR 172). This decision meant that the work done in female dominated occupations could be compared to that undertaken by male dominated occupations (Human Rights and Equal Opportunity Commission, 1998, p35).

However, traditionally in Australia, women’s award wages had been set at a lower rate than men’s. Men’s wages were set at a higher ‘family’ wage rate, as it was expected that their wage had to support dependants, in the form of a wife and children, while a woman’s wage was only to support herself (Bryson, 1994, p182). Whether a man was single or had a family to support, or whether a woman was herself supporting dependants did not matter (Bryson, 1994, p182). Furthermore this concept of the family wage in determining award wages remained in place even after these test cases and was not abandoned until 1974 (Bryson, 1994, p184).

Even today, despite having been formally awarded equal pay, women still on average earn less than men since men receive more by being paid more overtime, penalty rates and bonuses (Australian Council of Trade Unions, 2010). As a result, women retire with less superannuation than men. Differences between women and men’s superannuation savings when they retire are also influenced by the fact that women’s working lives are often interrupted for periods of time to have and care for children whilst men’s are not. Once retired, men aged between 55 and 64 enjoy superannuation that is 1.7 times that of similarly aged females (Easteal, 2010, p6). Even as graduates, straight out of university, women earn $2000 less than their male counterparts. This gap is further widened to $7500 less in their fifth year after graduation (Australian Council of Trade Unions, 2010).

Between 1990 and 2009 the gender wage gap has stayed around 15 to 17% (Cassells, Vidyattama, Miranti & McNamara, 2010). Today there is, on average, a 17.2% pay gap between men and women working full-time (Equal Opportunity for Women in the Workplace, 2011).

**Current Equal Pay Case (Equal Remuneration Case [2011] FWA FB 2700)**
Currently there is a new test case for equal pay before Fair Work Australia, brought by workers in social and community services (Australian Council of Trade Unions, 2011).
This is a female dominated area, traditionally seen as ‘women’s work’, so not as highly valued as the work done in other industries which has resulted in these employees receiving lower pay (Australian Council of Trade Unions, 2011). Workers in such female dominated occupations often earn less than those in male dominated professions (Office for Women, 2010b, p6).

The social and community services industry includes people who work in disability services, youth and children’s services, community centres, women’s services, family support services, community legal centres, home and community care services, drug and alcohol services, Indigenous services, tenancy services, and mental health services. The case will affect the wages of about 200,000 workers (Pay Up, 2011).

On 16 May, Fair Work Australia ruled that people working in the social and community services are underpaid compared to those doing similar work employed by state and local governments and that this is in part due to an undervaluation of the work done based on gender (Equal Remuneration Case [2011] FWAFB 2700). Further submissions are being made to Fair Work Australia before it decides on a remedy (Equal Remuneration Case [2011] FWAFB 2700).

**Equal Pay Day**

‘Equal Pay Day’ was declared by the Equal Opportunity for Women in the Workplace Agency on 1 September 2011. This day marks when women’s earnings caught up to those of men for the 2010-2011 financial year (Equal Opportunity for Women in the Workplace Agency, 2011). So it took 63 extra working days for women’s earnings to equal men’s for the last financial year (Equal Opportunity for Women in the Workplace Agency, 2011).

**Women in Positions of Power**

Although women’s participation in paid employment has increased, they are still underrepresented in the higher, powerful, decision-making positions. In 2001 Australia was ranked last in an International Labour Organization survey of all industrialised countries based on the number of women managers in the country (Summers, 2003, p178). While women make up 57% of employees in the public service, they account for only 36% of the public service’s senior executive positions and make up
34% of members on federal government managed boards, with 23% of these being deputy chair or chair positions (Department of Foreign Affairs and Trade, 2011).

In contrast only 12% of management positions in the private sector and 9% of private board director positions are occupied by women (Department of Foreign Affairs and Trade, 2011). Less than 2% of the Australian Stock Exchange 200 companies have a woman as their Chief Executive Officer (Australian Council of Trade Unions, 2011). Women are more likely to hold positions of power in industries that have traditionally been associated with women’s work, for example, in 2003, just over half the managers at the National Library were females as opposed to about only 11% in the Department of Defence’s Senior Executive Service (Summers, 2003, p197).

Women are also underrepresented in elected roles. In federal parliament, 35.5% of senators are women and 24.7% of House of Representatives members are women, including Australia’s first female Prime Minister Julia Gillard (Department of Foreign Affairs and Trade, 2011). Julia Gillard became Australia’s first Deputy Prime Minister in 2007 and first female Prime Minister in June 2010 (Australian Government, 2011). The 2001 federal election marked the first time a quarter of those elected to the House of Representatives were women (Summers, 2003, p206).

Also at the national level, Australia’s Governor-General is a woman, the first time in Australia’s history, with Quentin Bryce taking office in 2008 (Priest & Williams, 2010, p407).

At the state and territory level, Rosemary Follett became the first female leader of a state or territory government in Australia when she became Chief Minister of the Australian Capital Territory in 1989, while Dr Carmen Lawrence became the first female state premier in Australia when she took over as Western Australian Premier in 1990 (Australian Government, 2011; National Library of Australia, 2011). In 2002 Marion Scrymgour became a minister in the Northern Territory Government and later also became Deputy Chief Minister for the territory (Australian Government, 2011). She was the first Indigenous Australian woman to become a minister in any government in the country. However it wasn’t until 2009 that an Australian state elected a female Premier when Anna Bligh became Premier of Queensland (Queensland Government, 2011).
She had however already been Premier since 2007 when former Premier Peter Beattie resigned (Queensland Government, 2011).

Christine Nixon became the first female head of an Australian police force when she became the Chief Commissioner of Victoria Police in 2001 (Victoria Police, 2011a).

Of the judiciary at the federal level, 28.6% of judicial officers are women, with 16.3% of judges in the Federal Court, 34.3% of Family Court judges, 33.9% of Federal Magistrates, and 3 of the 7 Justices of the High Court of Australia being women (Department of Families, Housing, Community Services and Indigenous Affairs, 2010a). However of the 48 judges who have sat on the High Court in its 108 year history, only 4 have been women, the first of whom, Justice Mary Gaudron was appointed in 1987 (Priest & Williams, 2010, p412).

**Paid Parental Leave**

In 2010 the Australian Government announced the introduction of a paid parental scheme to begin on 1 January 2011 (Family Assistance Office, 2011a). New parents who are eligible can receive an amount equal to the National Minimum Wage as Parental Leave Pay funded by the government for up to 18 weeks (Family Assistance Office, 2011a). These payments are available to the primary caregiver of a newborn or adopted child while time is taken out from work to care for the child (Australian Government, 2009, p7). However Parental Leave Pay and the Baby Bonus cannot be claimed for the same child (Family Assistance Office, 2011a). People who work full time, part-time, as casual, seasonal, or contract workers and people who are self-employed can all be eligible for payments under the scheme (Family Assistance Office, 2011b).

Before the introduction of the Federal Government’s Paid Parental Leave Scheme, Australia, along with the United States, was the only Organisation for Economic Co-operation and Development (OECD) country which did not have such a national scheme (Australian Government, 2009). Although provision for paid maternity leave was made in award wages, most new mothers did not receive it other than those employed in the public sector (Bryson, 1994, p189). Access to paid maternity leave varied between industries, different positions and amounts of time worked (Penfold, 2010, p303). Yet all women were entitled to unpaid maternity leave (Summers, 2003, p51).
Childcare
In September 2002, 2.4 million women in Australia were not in paid employment, despite about 500,000 of them wanting, but being unable, to work. About 32% of those who wanted to work stated that the reason stopping them was a lack of appropriate childcare (Summers, 2003, p59). Since 1991 the number of children attending childcare has gone up from 256,326 to 871,107 in 2010 (Office of Early Childhood Education and Child Care, 2010, p2). Parents who have a child attending a child care service that is approved by, or registered with, the government may be eligible to receive the Child Care Benefit and/or the Child Care Rebate from the government (Centrelink, 2011). Compared to other Organisation for Economic Co-operation and Development (OECD) countries, the Australian government spends more on families in general than the OECD average but only 0.4% of its Gross National Product on childcare services which is less than the OECD average of 0.6% (Organisation for Economic Co-operation and Development, 2011).

Review into the Treatment of Women in the Australian Defence Force Academy and the Australian Defence Force
The Australian Human Rights Commission is currently running a review into the treatment of women in the Australian Defence Force. The review, headed by the Sex Discrimination Commissioner, Elizabeth Broderick, is being conducted in two phases (Australian Human Rights Commission, 2011d). The first phase looks at the how women are treated at the Australian Defence Forces Academy, particularly at measures to foster gender equality and women’s safety, and address sex discrimination and sexual harassment (Australian Human Rights Commission, 2011e). The second phase of the review will look at the Australian Defence Force more generally including strategies to increase the rate of women in senior and leadership positions (Australian Human Rights Commission, 2011e).

Office for Women
The Office for Women is a federal government office within the Department of Families, Housing, Community Services and Indigenous Affairs. It works to make sure that women’s issues and interests are considered in the formation of government policy and
legislation, and in decision-making (Department of Families, Housing, Community Services and Indigenous Affairs, 2010b). The Office for Women also discusses issues relating to women with non-government agencies and organisations and is involved in the delivery of programs and services relating to women (Department of Families, Housing, Community Services and Indigenous Affairs, 2010b).

The Office for Women outlines the following issues as priorities in its work: reducing violence against women, increasing women’s financial security and ‘ensuring women’s equal place in society’ (Department of Families, Housing, Community Services and Indigenous Affairs, 2010b). As part of increasing women’s participation within public life, the Office for Women provides an online register called AppointWomen, where women can put their names down to be considered for positions on government boards when they become available (Department of Families, Housing, Community Services and Indigenous Affairs, 2010c).

There are similar government offices relating to women’s issues in each of the Australian state and territory governments (see Office for Women (ACT), Office for Women’s Policy (NSW), Office of Women’s Policy (NT), Office for Women (Qld), Office for Women (SA), Women Tasmania (Tas), Office for Women (Vic) and Office for Women (Wa)).

**Violence against Women**

Violence is defined as ‘any incident involving the occurrence, attempt or threat of either physical or sexual assault’ (Australian Bureau of Statistics, 2007). In the 12 months prior to an Australian Bureau of Statistics (ABS) survey in 2005, 5.8% of female respondents had experienced some form of violence (Australian Bureau of Statistics, 2007). Of these, 4.7% had experienced physical violence and 1.6% had experienced sexual violence (Australian Bureau of Statistics, 2007). Younger women experienced more violence than older women, with 12% of those aged between 18 and 24 having experienced at least one occurrence of violence in the prior 12 months, 6.5% of those aged between 35 and 44, and 1.7% of those aged 55 and over (Australian Bureau of Statistics, 2007). In total, women who were 25 years or older had experienced more violence than men aged 25 years or over in the 12 months leading up to the survey, 74% compared to 62% (Australian Bureau of Statistics, 2007).
Women too are more likely to experience sexual assault than men, the percentages being 17% for women in the 12 months prior to the survey as opposed to 4.8% of men (Australian Bureau of Statistics, 2007). However the extent of the violence experienced by women younger than 35 had decreased compared to an earlier ABS survey in 1996, while for older women it had increased (Australian Bureau of Statistics, 2007).

Of those women who had experienced physical assault at the hands of a man in the 2005 survey, 36% had reported the assault to the police, while in the 1996, only 19% had done so (Australian Bureau of Statistics, 2007). Although, of the women who reported experiencing sexual assault in the 2005 survey, just 19% reported it to the police whereas only 15% had in the 1996 survey (Australian Bureau of Statistics, 2007).

While the majority of men who reported they had been physically assaulted in the previous 12 months in the 2005 survey were assaulted by a male stranger (65%), women were more likely to report that they had been physically assaulted by a current or previous partner (31%) (Australian Bureau of Statistics, 2007). Also for 64% of the women who had experienced a physical assault at the hands of a man, the assault had occurred in a home (Australian Bureau of Statistics, 2007). Of the women who had experienced violence from a current partner, 10% had a violence order granted against him, however of those who did have a violence order, 20% had still experienced further violence (Australia Bureau of Statistics, 2007). For the women who reported being sexually assaulted in the 12 months prior to the 2005 survey, the most recent occurrence had been committed by a stranger in 22% of cases, while in 39% of cases the assaults were committed by a family member or friend, in 21% of cases by a previous partner and in 32% by another person known to the victim (Australian Bureau of Statistics, 2007).

Over their lifetime, about 1 in 3 Australian women will experience physical violence and about 1 in 5 will experience some form of sexual violence (National Council to Reduce Violence against Women and their Children, 2009, p9). Aboriginal and Torres Strait Islander women and women with a disability are more likely to experience physical and sexual assault than other women (National Council to Reduce Violence against Women and their Children, 2009, p9).
Violence against women costs the Australian economy $13.6 billion a year (Rimmer, 2010, p309).

**Family Violence**

Family violence, does not only refer to physical or sexual assault but also includes sexual, emotional, psychological and financial abuse, threats, damaging property and the harming pets of family members (Alexander, 2010, p154).

A female has more chance of being ‘abused, assaulted, raped or even killed in her home by a male partner than anywhere else or by anyone else’ (Alexander, 2010, p152). Women are more likely to be victims of family violence than men (VicHealth, 2004, p10). The World Health Organisation has asserted that the domestic violence committed by male perpetrators is the ‘most common’ risk to women’s health in the world (Alexander, 2010, p153). A study by VicHealth found that intimate partner violence is a bigger preventable cause of ill health and premature death for Victorian women younger than 45 years than smoking, high blood pressure or obesity (VicHealth, 2004, p8).

The first women’s refuge set up to help women and children who were leaving a situation of family violence was the Elsie Women’s Refuge established in Glebe, Sydney in 1972 (Australian Women’s Register, 2010c).

**Legal and Social Responses to Family Violence in Victoria**

(The author would like to acknowledge the assistance of Alison Macdonald from Domestic Violence Victoria for her assistance with this section of the report).

When Christine Nixon became Chief Commissioner of Victoria Police in 2001, she was also the first woman to head any police organisation in Australia (Victoria Police, 2011a). One of the things she wanted to achieve was to reform the law and police practices in relation to family violence. Policing of family violence had previously not been a priority of the police (Macdonald, A. (Personal communication. 2011, October 12)). In 2002 the Statewide Steering Committee Reduce Family Violence, brought together various government and non-government bodies to discuss how to improve their response to family violence. This resulted in the development of a Code of Practice for Police when
investigating family violence (Macdonald, A. (Personal communication. 2011, October 12)).

In 2006, after looking into possible reforms in the area of family violence, the Victorian Law Reform Commission (VLRC) produced a report containing numerous recommendations. These included:

- Replacing the existing *Crimes (Family Violence) Act 1987* (Vic), with new legislation specifically dealing with family violence
- Widening the definition of ‘family violence’ to include non-physical harm, threatening to, or injuring or killing an animal, emotional and economic abuse
- Broadening the definition of ‘family member’ to include Aboriginal kinship relationships and other types of relationships
- Development of a specialist prosecuting unit for family violence matters within Victoria Police
- Specialist lists for family violence matters in the Magistrates’ Court (Victorian Legal Reform Commission, 2010).

The Victorian Government introduced the *Family Violence Protection Act 2008* (Vic) which was largely based on the recommendations made by the VLRC. This Act is viewed as a leading piece of legislation relating to family violence (Macdonald, A. (Personal communication. 2011, October 12)). It enables police to issue interim intervention orders, called family violence safety notices, against offenders outside 9am to 5pm on weekdays as well as on weekends when the court is closed (s24(e) Family Violence Protection Act 2008). A safety notice remains in place until the matter can be heard by a court (s30 Family Violence Protection Act 2008 (Vic)). Safety notices are important as most family violence incidents occur on Friday nights and over the weekend (Macdonald, A. (Personal communication. 2011, October 12)).

In 2005 two specialist family violence courts were established at Ballarat and Heidelberg. These courts provide specialist services such as referral and advocacy, as well as applicant support workers, respondent support workers and outreach workers. As well, all people working in the court including the magistrate, registrar, police prosecutors, lawyers and support workers are specially trained in family violence matters (Magistrates’ Court of Victoria, 2010).
Aside from these specialist courts, a specialist family violence service operates at Melbourne, Frankston, Werribee and Sunshine Magistrates’ Courts. The specialist family violence service functions in a similar way to the specialist courts, but is able to hear other matters involving the parties aside from the family violence intervention order and cannot direct respondents to mandatory counselling (Magistrates’ Court of Victoria, 2010).

Traditionally the response to family violence was that the woman (and children) would flee from the family home. This can lead to poverty and dislocation for the woman as she may have to leave her job, take her children out of school and lose connections within the community (Macdonald, A. (Personal communication. 2011, October 12)). Family violence is one of the leading causes of homelessness in Australia (Macdonald, A. (Personal communication. 2011, October 12)). However now the aim is to keep the woman in her home to the exclusion of the perpetrator of the violence, so that the perpetrator and not the victim is punished by having to leave. However this can have its own difficulties for the woman, such as her being unable to pay the rent or meet the mortgage repayments and the perpetrator knowing where she is (Macdonald, A. (Personal communication. 2011, October 12)). Police responses to breaches of orders need to be improved to increase the safety of the woman if she remains in the home but this may be hard considering police are already stretched (Macdonald, A. (Personal communication. 2011, October 12)). So in some cases the woman still needs to flee for reasons of her own safety.

**Family Law Act 1975 (Cth) and Family Violence**

(The author would like to acknowledge the assistance of Alison Macdonald from Domestic Violence Victoria for her assistance with this section of the report).

While state and territory legislation deals with protection from family violence, the *Family Law Act 1975*, a Commonwealth Act, governs issues of divorce and separation. Parenting orders are made under this Act. Due to the differing jurisdictions, concerns have been raised about their interactions and about protecting people from family violence.
Where a parenting order made under the *Family Law Act 1975* (Cth) is inconsistent with an existing family violence order under state or territory legislation, the family violence order is invalid (s68Q, *Family Law Act 1975* (Cth)). This situation could leave someone vulnerable to violence, for example where a parenting order grants access to a parent, who has a family violence order preventing them contacting the child’s other parent, with whom the child lives, thus possibly making the family violence order invalid. Section 68R of the *Family Law Act 1975* (Cth), allows a state or territory court when making a family violence order to vary, discharge or suspend a parenting order made under the *Family Law Act 1975* (Cth). However the Australian Law Reform Commission (ALRC) has found that often legal practitioners are unwilling to use this section as any variation of a parenting order made by a state or territory court may be overruled by a federal family court (Australian Law Reform Commission, 2010a).

State and Territory courts often attempt to prevent inconsistency between the family violence orders they make and parenting orders by making contact between the parties required under a parenting order an exemption in the family violence order (Australian Law Reform Commission, 2010b). This however can put women and children at risk of violence during an access visit or handover (Australian Law Reform Commission, 2010b).

The *Family Law Act 1975* (Cth) has been criticised for discouraging parents from alleging or disclosing family violence in parenting matters. Section 60CC(3)(c) of the Act, often referred to as ‘the friendly parent provision’, makes the willingness of each parent to facilitate and encourage a close and ongoing relationship between the child and the other parent a factor for the court to consider in determining the best interests of a child when making parenting orders. Women are often therefore discouraged by their lawyer from making allegations of family violence unless they can prove the allegation, which can be difficult to do, as not participating or cooperating in parenting arrangement negotiations will go against the them (Macdonald, A. (Personal communication. 2011, October 12)).

Reforms to the *Family Law Act 1975* (Cth) to improve safety are currently going before the Commonwealth Senate (Macdonald, A. (Personal communication. 2011, October 12)).
Responses to Sexual Assault in Victoria

(The author would like to acknowledge the assistance of Pauline Gilbert and Victoria from CASA House for their assistance with this section of the report).

Services to assist women, who had been sexually assaulted, such as the first rape crisis centre in Victoria which was established in 1974 in Collingwood, were unfunded and were run by volunteers (Hewitt & Worth, 2010). However the Federal Government provided funding for rape crisis centres to be administered through the state governments (Hewitt & Worth, 2010). This led to the establishment of such centres in some states, but the rape crisis centre in Victoria did not receive any funding as the state government ‘withheld funding…due to a disagreement about management and organisational structures’ with the centre (Hewitt & Worth, 2010). The first funded rape crisis centre in Victoria was the Queen Victoria Sexual Assault Clinic in 1978 (McCarthy, 1990, p4). There are now 15 government funded rape crisis centres across Victoria (Hewitt & Worth, 2010).

Originally women who had been sexually assaulted were treated as having a mental condition which needed to be treated whereas now their reactions are recognised as a normal response to a trauma (Gilbert, P. (Personal communication. 2011, October 19)). Rather than responding to them with a purely medical model of health, today a social model is used instead (McCarthy, 1990, p4).

A specialist unit within Victoria Police, the Sexual Offences and Child Abuse Unit (SOCA) has been developed in recent years to respond to sexual offences and child abuse (Victoria Police, 2011b). Being specially trained, these officers and the development of a Code of Practice for the Investigation of Sexual Assault for police has led to an improvement in police response to victims of sexual assault (Gilbert, P. (Personal communication. 2011, October 19)).

However according to staff at CASA House, current issues are internet pornography, trafficking of women to Australia for work in the sex industry and violence against women (Gilbert, P. (Personal communication. 2011, October 19)).
Police surgeon with the Victoria Police from 1977 to 1978, Peter Bush was instrumental in getting private rooms in hospitals for examining and counselling women who had been raped (Hewitt & Worth, 2010).

**Sexual Assault and the Criminal Justice System**

(The author would like to acknowledge the assistance of Pauline Gilbert and Victoria from CASA House for their assistance with this section of the report).

Sexual assaults are one of the most under reported crimes. Only 19% of women who had been sexually assaulted in the 12 month prior to being surveyed in 2005 by the Australian Bureau of Statistics, reported the assault to the police (Australian Bureau of Statistics, 2007). In court, cases of sexual assault can be hard to prove as often the incident happens in private and there are no witnesses or corroborating evidence, resulting in cases resting on the word of the complainant against the word of the accused (Taylor, 2007). When sexual assault cases are heard in the higher courts by a judge and jury, over half result in acquittal (Taylor, 2007). Sexual assault cases in the higher courts resulted in acquittals more often between 2003 and 2006 than any other serious offence type (Taylor, 2007). Although the numbers of reporting and of prosecutions for sexual assault are increasing, the number of convictions is falling (Gilbert, P. (Personal communication. 2011, October 19)). Part of the reason for this low level of convictions is the myths that still permeate society. As members of the general community, jurors may believe these myths and ‘acceptance of these myths may mean that jurors have strong expectations about how a “real” victim would behave before, during and after an alleged sexual assault’ (Loughman, van de Zandt, Saw & Hunter, 2007, p1). Common myths around rape include that if the victim was dressed provocatively, had been drinking, or was walking alone at night that she ‘asked for it’ and therefore that she is, at least in some part, responsible for what happened rather than the perpetrator (CASA House, 2010).

If a rape case is prosecuted, the time from when a women makes her initial report to the police to when her involvement in the court case is over can extend to two years (Gilbert, P. (Personal communication. 2011, October 19)). This does not include applications that the victim can make to the Victims of Crime Assistance Tribunal (VOCAT) for monetary compensation towards expenses such as medical costs, counselling, safety related
costs and lost earnings as a result of violent crime (Victims of Crime Assistance Tribunal, 2011). However, victims have described the VOCAT process as a second court trial (Gilbert, P. (Personal communication. 2011, October 19)).
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