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# Women and the Law

## Election Agenda



Combined Community  
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## Acknowledgements

We would like to thank all those who contributed to the Women and the Law Election Agenda, particularly the Women's Legal Resource Centre, Wirringa Baiya Aboriginal Women's Legal Centre, the Disability Discrimination Legal Centre, People with Disabilities (NSW), the NSW Anti-Discrimination Board, the Women's Network of Community Legal Centres, Illawarra Legal Centre, Kingsford Legal Centre and the Intellectual Disability and Rights Service.

## End Notes

- 1 National Processing Centre 001 data. Analysis of Clients by Gender, 2000.
- 2 NSW Anti-Discrimination Board Annual Report 2000/2001.
- 3 Recommendations from *Discrimination... have you got all day?* by Public Interest Advocacy Centre and Wirringa Baiya Aboriginal Women's Legal Centre, 2001.
- 4 A Response to the Government's Draft CEDAW Report from an NGO Working Group - Paper, 2002.
- 5 A Response to the Government's Draft CEDAW Report from an NGO Working Group - Paper, 2002.
- 6 Public Sector Management (General) Regulation 1996; The Personnel Handbook published by the Premier's Department.
- 7 Recommendations from the Combined Community Legal Centres' Group. NSW submission to the NSW Attorney Generals Review of Victims Compensation Legislation, 2002.

- Increase the number of Accredited Report Writers appointed in rural and remote areas so that those living in these regions have greater access to the Tribunal.

## New Initiatives

The following services should all be developed in consultation with those for whom the service is intended, and be responsive to issues of physical access as well as accessibility of a service in relation to its language, information, communication and support for clients.

### 21 State-wide Children's Legal Service

Fund a state-wide children's legal advocacy service and a network of children's advocates and implement the remaining recommendations of the Parliament of NSW Legislative Council Standing Committee on Social Issues Inquiry into Children's Advocacy (1996).

### 22 Magellan Project

Fund Project Magellan, a partnership between Department of Community Services, Legal Aid Commission, and the Family Court. Project Magellan is a specialised case management system in the Family Court for matters in which child abuse allegations are made - includes specialist judges, court staff, DOCs workers and guarantees uncapped legal aid for all parties who pass the means test. This project is supported by the Family Court.

### 23 Pilot Children's District and Local Court

Establish a designated Children's District and Local Court for matters involving children who are victims of personal violence offences (child sexual assault, assault etc), including specialist court staff and judges, no juries and an independent expert interviewer who would interview the child and assist the court with the child's evidence.

## Introduction

The Women and the Law Election Agenda is a compilation of issues developed by the Combined Community Legal Centres' Group.NSW in collaboration with our members as well as other community sectors and individuals.

Women are the majority of swing voters in Australia and as such are a significant population when it comes to elections. Literally, elections can be won or lost for potential Governments if women vote on shared interests and common concerns. This agenda is an initiative to establish common ground on key issues for women of all ages, backgrounds, interests and political affiliations and to influence political outcomes favourable for women. Women's participation in political decision-making is not only an act of democracy it is also essential for women's interests to be taken into account. We call on all political parties to take an interest in this agenda, and respond to its calls for legislative changes, increases in funding, access to legal and other services, and better justice outcomes for all. This is an agenda towards women's human rights and gender equality.

The issues identified are both specific and systemic, immediate and long term, many are targeted with pragmatic actions for implementation, and reflect the range and breadth of issues important to women and the community.

We would like to acknowledge that this is not an exhaustive list. However, the Women and Law Election Agenda does provide a comprehensive basis for others to add to, it gives momentum to a gender perspective on current issues and political processes, and in many respects represents the items at the top of many women's 'lists' regarding changes which will enhance their lives in direct and meaningful ways.

We invite you to join with us in promoting this Women and the Law Election Agenda.

## Access

Access needs to be understood in its broadest sense and includes physical and geographic accessibility as well as access in relation to the type of information and communication provided by the service or organisation, the methods in which it is presented, the attitude of

the staff of the service, and the cultural respect and safety afforded to clients and the community.

## 1 Increase funding for Community Legal Centres

Community Legal Centres (CLCs) provide accessible, free legal services to the community. 60% of the clients of CLCs across NSW are women<sup>1</sup>. CLCs deal with a high level of family violence issues, child contact and residency, divorce and child support, tenancy, discrimination, employment and other civil law matters. In addition CLCs provide specific services for women, including the Domestic Violence Advocacy Service, Women's Legal Resource Centre and Wirringa Baiya Aboriginal Women's Legal Centre.

An additional and immediate \$1.7 m increase in funding for Community Legal Centres is needed to ensure their viability and expand the provision of legal services to the community including women, and facilitate their participation in the justice system.

## 2 Increase Access to Solicitors for Family Law Matters

Access to solicitors regarding Family Law matters is critically low particularly in rural areas. Increase legal aid rates of payment for private solicitors to improve their participation in the provision of Family Law, and increase funding for duty solicitor schemes at Family Courts in NSW.

## 3 Funding for Aboriginal Family Violence Prevention Units

Increase funding for existing Aboriginal Family Violence Prevention Units in Moree, Kempsey and Walgett and expand this successful program.

## 4 Provide a Comprehensive Court Assistance Scheme in New South Wales

Fund a comprehensive Women's Domestic Violence Court Assistance Scheme throughout NSW and adequately resource the existing schemes.

## 5 Legal Aid Commission Domestic Violence Policies

Reverse the recent changes in Legal Aid Commission policy on funding for Apprehended Violence Orders (AVOs) in domestic violence. Currently clients will not get legal aid for AVO applications unless they have an intimate relationship with the perpetrator (which

responsibilities. Ensure that employers may only refuse such an application where accommodating the request would cause unjustifiable hardship.

- Amend the ADA definition of carers responsibilities to broaden the category of persons to whom a carers responsibilities may be had, to include such persons as aunts, uncles, cousins, extended kinship relationships and relationships of affinity.

## 19 Children and Young Persons (Care and Protection) Act 1998

Immediately proclaim the Office of the Children's Guardian and Out of Home Care sections of the Children and Young Persons Care and Protection Act (1998).

## 20 Victims Compensation<sup>7</sup>

- Abandon the Victim's Compensation Restitution Scheme.
- Review the recent increase in the compensation threshold from \$2,400 to \$7,500 of the Victims Rights and Rehabilitation Act (1996), so that victims are able to claim reimbursement of their actual dental and medical expenses and loss of income resulting from an act of violence.
- Amend Section 26 of the Victims Rights and Rehabilitation Act (1996) to include a separate provision for child victims to be able to make a claim within two years of turning 18 while retaining child abuse as a category under s26 (3) (b).
- Recommend that the Tribunal develop guidelines for assessors, under s65 making it clear that a beneficial approach should be taken towards out of time application.
- Amend Section 5 of the Victims Rights and Rehabilitation Act (1996) to ensure that an act of violence extends to compensable injury of sexual assault as defined in the relevant schedule.
- Amend Section 6 of the Victims Rights and Rehabilitation Act (1996) to include serious childhood sexual assault in Category 3 sexual assault so that it is compensable at the highest level.
- Amend the Domestic Violence category of the Victims Rights and Rehabilitation Act (1996) to provide for a range of category injuries so that the legislation takes into account the duration of the violent relationship, the variety of the acts of violence and the range of injuries both psychological and physical.

- As a minimum measure, ensure that the Government does not legislate to prohibit access to assisted reproductive technology services.

## 17 Paid Maternity Leave

We urge the NSW Government to formally support a Federally funded paid maternity scheme of 14 weeks paid maternity leave in line with ILO Convention 183, to be progressively extended to 18 weeks in line with ILO recommendation 191.

In the interim, pass state legislation introducing 9 weeks paid maternity leave for all women in NSW. Currently only women employed in the NSW State Public Service receive this entitlement<sup>6</sup>. This disadvantages women in NSW who are employed in the private sector, community sector and in small business.

## 18 End Pregnancy and Carers Responsibilities Discrimination in New South Wales

- Amend the Anti-Discrimination Act (ADA), 1977 (NSW) to allow a proactive approach to addressing issues of discrimination which are systemic in nature
- Simplify indirect discrimination provisions of the ADA generally in line with the Federal Sex Discrimination Act
- Amend the ADA to make pregnancy an explicit ground of discrimination under the Act.
- Amend the ADA to make breastfeeding an explicit ground of discrimination under the Act
- Remove sections 25 (1A) and 25(2A) of the Anti-Discrimination Act which allow an employer to discriminate against a woman on the grounds of sex if she is pregnant at the time of recruitment, and to dismiss a woman if she was aware she was pregnant when applying for the job
- Amend section 35 to make it clear that the provision of maternity leave will not unlawfully discriminate against men
- Amend the Industrial Relations Act 1996 (NSW) to give a right to return to work part time following a period of parental leave
- Amend the Industrial Relations Act 1996 (NSW) to impose a duty on employers to consider applications from people with carers responsibilities to vary hours of work, the arrangement of hours of work or the place of work in order to meet their carers

excludes housemates and adult/child applications). This policy should be reversed so that legal aid funding is available for all AVO matters (including housemates and applications by parents against children and children against parents).

## 6 Increase funding for the NSW Anti-Discrimination Board (ADB)

The largest number of complaints made to the ADB are in relation to Sex Discrimination, including sexual harassment and pregnancy related discrimination in employment<sup>2</sup>. The ADB is inadequately funded and has an unacceptably long waiting time for assignment of cases for investigation due to lack of resources.

- Increase funding and resources to the ADB to adequately deal with the extent of issues of discrimination and to reduce waiting time for the investigation of complaints
- Increase the number of Indigenous staff employed by the ADB including those available to handle complaints
- Provide additional resources to allow the production of further Koori-friendly resources on the services provided by the ADB, specifically on how to access the complaints system
- Amend the Anti-Discrimination Act (ADA) 1977 to allow a complaint to be lodged in a form other than writing such as recording oral statements
- Amend the ADA and provide resources to allow staff of the ADB to assist people who are particularly disadvantaged to formulate their complaint
- Provide additional resources to expand programs to urban and rural Indigenous communities to explain and promote services offered by the ADB<sup>3</sup>.

## 7 We call on the Government to:

- Monitor the application of the carer provisions under the Anti-Discrimination Act 1977 (NSW)
- Provide more public information and education about the provision and the benefits of flexible work arrangements for both employees and employers
- Monitor and analyse complaints relating to the carer provisions
- Assist in assessment of positions to permanent part-time, job-share, flexible work hours, work from home, carer leave arrangements, and career progression.

## **8 Implement recommendations from *Quarter Way to Equal Report* (1994)**

Implement the recommendations from the current review of the Quarter Way to Equal Report (1994), on barriers to access to legal services for migrant women, and implement the recommendations contained in the original report.

## **9 Director of Public Prosecution Witness Assistance Service**

Increase funding for the DPP's Witness Assistance Scheme to employ rural Witness Assistance Scheme Officers.

## **10 Expand the Parent Access Program, auspiced by the Family Support Services**

Around 1 in 3 children born to mothers with an intellectual disability are removed and placed in out-of-home care. Almost 1 in 6 children placed by the courts in foster or residential care have mothers with an intellectual disability.

Frontline human service workers in child protection, disability and family support services are ill-equipped in terms of training and resources to work effectively with parents with intellectual disability.

The Department of Community Services should adequately fund and expand the Parent Access Program to assist with reducing unnecessary child removal and to meet the demand for statewide training for specialist and generic service providers working with parents with disabilities.

## **11 Parent Assessment methodology review**

Review the parenting assessment methodology for parents who come before the Courts in relation to child protection matters. The current assessment is based on an intelligence capacity test which inherently disadvantages people with cognitive impairment and/or intellectual disability and has been shown to be irrelevant in relation to parental capacity.

## **12 Increased funding for parents with disabilities**

Increase funding for and expand DOCs support and assistance to parents with disabilities in being able to carry out their parental responsibilities.

# **Gender Equity and Participation**

## **13 Women in the judiciary**

Develop processes and protocols to ensure gender equity in the appointment of women to the judiciary.

## **14 Women's representation on government and non-government boards**

Introduce special measures to adopt targets, quotas and incentives to improve women's representation on government and non-government boards and to advance women's participation in the workforce on an equal basis with men<sup>4</sup>.

## **15 Women's contribution to NSW legislative policy making**

Address barriers to the political participation by NSW women to contribute to legislative policy making. Currently participation is limited by:

- Inadequate funding for women's organisations
- Outcomes from community consultations are controlled by the Government
- Lack of diversity in participants to adequately reflect Australia's varied cultural and linguistic populations
- Insufficient access to decision-makers<sup>5</sup>.

# **Legislative Reform**

## **16 Sex Discrimination Legislation**

In response to possible amendments to the Federal Sex Discrimination Act (SDA) allowing States to discriminate against women on the basis of their marital status and sexuality in the provision of assisted reproductive technology services, contrary to CEDAW and the findings of the Federal Parliamentary Committee, we call on the New South Wales Government to:

- Ensure women in NSW the same legal rights and access to services, (guaranteed under the original SDA), specifically in relation to access to assisted reproductive technology services for all women regardless of sexuality and marital status.