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**Australian Lawyers for Human Rights**  
**Shadow Report: Australia's compliance with the Convention on the**  
**Elimination of all forms of Discrimination against Women (CEDAW)**

Australian Lawyers for Human Rights (**ALHR**) is a national association of lawyers, academics, judicial officers and students who practice and promote international human rights law in Australia. ALHR is grateful for the opportunity to provide a shadow report to the Committee on the Elimination of Discrimination against Women.

**EXECUTIVE SUMMARY AND OVERVIEW**

Since the last reporting cycle, Australia has taken a number of positive steps to implement its obligations under CEDAW but significant gaps in implementation remain.

The Commonwealth has not implemented the Committee's longstanding recommendation with respect to the enactment of a federal charter of human rights. There remains no federal guarantee of equality between men and women or general prohibition on discrimination against women.

Gender stereotyping continues to pervade Australian society, and discriminatory stereotypes have a disproportionate impact on women and girls, but also, with even more pervasiveness, women who experience intersecting forms of discrimination, including Aboriginal and Torres Strait Islander women, lesbian and transgender women, refugees and migrant women, and women with a disability. Australia is yet to develop a comprehensive strategy to overcome discriminatory gender-based stereotypes.

Gender inequality persists in employment, with a national gender pay gap of 14.1%; a gap wider still for women who experience intersectional disadvantage, including women from migrant or refugee backgrounds and Aboriginal and Torres Strait Islander women.<sup>1</sup> Women bear a disproportionate share of unpaid work<sup>2</sup> and men's superannuation balances on retirement are on average twice as large as women's.<sup>3</sup> Women aged 55 and over are at higher risk of poverty and represent the fastest growing group experiencing homelessness in Australia.<sup>4</sup>

On 15 March 2021, tens of thousands of Australians marched across the nation to demand an end to gender-based violence, harassment and discrimination. The protests followed the reporting of a number of allegations of sexual assault, including accounts of sexual violence perpetrated against schoolgirls, and concomitant disbelief, dehumanisation and victim-blaming faced by accusers. The demonstrations were a manifestation of pent-up frustration over entrenched gender inequality, stereotyping and the failure to address gender-based violence and discrimination. While the protest organisers' demands for full investigations into all allegations of gendered violence and a federal Gender Equality Act were not met, their demands for workplace sexual harassment legislation have been realised and will mark an important step in Australia's implementation of CEDAW. This legislation will be considered below, followed by a discussion of four key areas of concern, namely violence against women, the detention of women and girls, the realisation of reproductive health and the intersecting forms of discrimination experienced by some women, including Aboriginal and Torres Strait Islander women and girls.

## **WORKPLCE SEXUAL HARASSMENT**

On 28 November 2022, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Act) was enacted. The legislation was enacted in response to the findings of the Australian Human Rights Commission's *National Inquiry into Sexual*

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<sup>1</sup> [Gender pay gap data | WGEA](#)

<sup>2</sup> Ruppner, L. Census 2016: Women are still disadvantaged by the amount of unpaid housework they do 11 April 2017, *The Conversation* at <<http://theconversation.com/census-2016-women-are-still-disadvantaged-by-the-amount-of-unpaid-housework-they-do-76008>>.

<sup>3</sup> Australian Government, The Senate Economics References Committee, *'A husband is not a retirement plan', Achieving economic security for women in retirement*, 29 April 2016.

<sup>4</sup> Australian Human Rights Commission, *Older Women's Risk of Homelessness Background Paper*, 4 April 2019; R Tanton, Y Vidyattama, J McNamara, Q Ngu Vu & A Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15.

*Harassment in Australian Workplaces* (National Inquiry).<sup>5</sup> The inquiry found that 33% of workers had experienced sexual harassment in the workplace in the preceding five years. In addition to showing that women are disproportionately affected, it was also clear that younger workers, LGBTI workers, Aboriginal and Torres Strait Islander workers, workers from culturally diverse backgrounds and workers with disability were more likely to be harassed.<sup>6</sup>

While the *Sex Discrimination Act 1984* (Cth) specifically addresses workplace sexual harassment, progress over the last four decades has advanced slowly. Australia now lags behind other countries in its response to sexual harassment in the workplace.<sup>7</sup>

The inquiry found that current approaches to preventing and responding to workplace sexual harassment have tended to focus on prohibiting sexual harassment and establishing complaint mechanisms for workers wishing to report it, and have been typically ‘reactive, legalistic and often contribute to ongoing (albeit unintended) harm to workers.’<sup>8</sup>

Changes introduced by the new legislation include:

- introducing a positive duty on all employers and persons conducting a business or undertaking to take reasonable and proportionate measures to eliminate unlawful sex discrimination and sexual harassment;
- prohibiting hostile workplaces which may be offensive, intimidating or offensive to a worker on the ground of sex;
- expanding the investigative and enforcement powers of the Australian Human Rights Commission (this includes conducting inquiries into systemic unlawful discrimination in workplaces);
- lowering the threshold for findings that sexual harassment has occurred;
- enabling representative bodies (for example, unions) to bring representative applications in the Federal Court or the Federal Circuit and Family Court of Australia on behalf of workers;
- inserting a ‘cost protection’ provision which, while still preserving judicial discretion, establishes that the default position is that each party bear their own costs; and

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<sup>5</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian*, January, 2020.

<sup>6</sup> *Ibid* 92.

<sup>7</sup> *Ibid* 9.

<sup>8</sup> *Ibid* 618.

- including victimising conduct within the ambit of a civil cause of action.

ALHR welcomes the enactment of this legislation, which will play an important role in making Australian workplaces safer and more inclusive.

## **VIOLENCE AGAINST WOMEN**

Violence against women remains endemic in Australia and continues to impede efforts to promote gender equality. One in three women has experienced physical violence since the age of 15, and one in five has experienced sexual violence.<sup>9</sup> Aboriginal and Torres Strait Islander women experience significantly higher levels of violence than non-Indigenous women, with around three in five Indigenous women having experienced physical or sexual violence by a male intimate partner.<sup>10</sup>

On 17 October 2022, the Australian, state and territory governments released the *National Plan to End Violence against Women and Children 2022–2032* (National Plan). The National Plan is the overarching national policy framework that will guide actions towards ending violence against women and children over the next 10 years. The National Plan builds on the first *National Plan to Reduce Violence against Women and their Children 2010–2022*.

Significant legislative reforms relating to violence against women have also been introduced since Australia’s provided its eighth periodic report in 2016. For example:

- Legislation criminalising coercive control was passed in New South Wales, with the new laws set to take effect in 2024;
- Paid domestic and family violence leave for employees was introduced in a number of jurisdictions;
- “Affirmative consent” laws were introduced in a number of jurisdictions;
- Various laws were introduced to strengthen protections for victims of DFV; and
- Legislation was passed in the Australian Capital Territory introducing “subjection to domestic or family violence” as a protected attribute under anti-discrimination law.

Notwithstanding these positive developments, numerous challenges remain.

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<sup>9</sup> Australian Bureau of Statistics, *2016 Personal Safety Survey*, Australian Government, 2017.

<sup>10</sup> Our Watch, *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*, 2018.

ALHR welcomes the prioritisation of primary prevention as a dedicated pillar in the National Plan and the various primary prevention initiatives that have been introduced in recent years. However, significantly more needs to be done in this area. Future efforts should build on existing prevention initiatives with a greater emphasis on promoting gender equality and addressing the structural and systemic drivers of violence against women.

Domestic, family and sexual violence services remain underfunded across Australia. More long-term, secure funding for such services, and for organisations promoting and protecting women's rights more generally, is urgently needed at both federal and state level. There is also a need for improved data collection relating to violence against women. While progress has been made in this area, there remain significant data gaps which hinder evidence-based policy development and law reform

## **CRIMINAL JUSTICE SYSTEM**

The imprisonment of women in Australia has compounded the trauma and disadvantage experienced by many women, particularly those who experience intersectional disadvantage and discrimination.<sup>11</sup> Research has found that up to 90% of women in prison are survivors of violence<sup>12</sup> and more than half of incarcerated women have dependent children.<sup>13</sup> Aboriginal and Torres Strait Islander women are incarcerated at an alarming rate; despite only accounting for approximately 3% of women in Australia, they represent around 34% of women in prison.<sup>14</sup> Aboriginal and Torres Strait Islander girls, some as young as ten, are

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<sup>11</sup> See Alison Lieblich and Shadd Maruna (eds), *The Effects of Imprisonment* (Willan, Cullompton, 2005); Marie Serve and Bree Carlton, 'Women, Trauma, Criminalisation and Imprisonment' (2010) 22 *Current Issues in Criminal Justice* 294. On the intergenerational trauma experienced by many Aboriginal and Torres Strait Islander people in Australia, see Healing Foundation, 'Growing out children up strong and deadly: healing for children and young people' (Working Paper, Healing Foundation, 2013); see also [Why more women are doing time in Australia's prisons – Monash Lens](#)

<sup>12</sup> Australian Institute of Family Studies, Commonwealth Government, *Addressing Women's Victimization Histories in Custodial Settings* (December 2012) <https://aifs.gov.au/publications/addressing-womens-victimisation-histories-custodial-settings>; Moloney et. al, 'Women in Prison: The Central issue of Gender Characteristics and Trauma History' (2009) 126 *Public Health* 426; Holly Johnson, 'Drugs and Crime: A Study of Incarcerated Female Offenders' 63 *Australian Institute of Criminology* (2004).

<sup>13</sup> See e.g., Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (Discussion Paper, October 2014) <https://www.ombudsman.vic.gov.au/getattachment/280f4a06-5927-4221-bf64-d884ba6abaf9/>. See also, Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>.

<sup>14</sup> See e.g., Human Rights Law Centre and Change the Record, *Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-imprisonment* (2017) <https://www.hrlc.org.au/news/2017/5/10/overrepresented-overlooked-report-37>

incarcerated at a disproportionate rate in youth justice facilities. Since the Royal Commission into Aboriginal Deaths in Custody<sup>15</sup> found in 1991 that Aboriginal people were incarcerated at a disproportionate rate and recommended that measures be adopted to reduce their incarceration, the population of Aboriginal women in prison has risen by 148%.<sup>16</sup>

Within the environment of prison and youth detention, women and girls have been held in overcrowded facilities in which their healthcare and other needs have not been met and in which they have been subjected to invasive strip searches and harsh conditions. Many are detained while awaiting sentencing or trial due to a lack of safe accommodation or rehabilitation options in the community and limited access to assets for surety or bail.

The incarceration of women and children has failed to comply with international standards, including the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and human rights treaties. ALHR is concerned about the lack of cooperation that led to the suspension of the visit to Australia by the United Nations Subcommittee on the Prevention of Torture in October 2022 under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## **REPRODUCTIVE RIGHTS**

In its follow-up letter of 19 July 2021, the Committee sought information on actions taken to advance sexual and reproductive health rights. Australia's National Women's Health Strategy 2020-2030 seeks to advance access to reproductive healthcare in line with Australia's obligations under CEDAW. The Albanese government, elected in May 2022, has taken some significant steps towards advancing reproductive rights, including establishing a National Women's Health Advisory Committee and is undertaking an inquiry into universal access to reproductive healthcare.

Nevertheless, there remain significant gaps in access to effective contraception and affordable abortion care<sup>17</sup> which have a disproportionate impact on women and girls who experience

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<sup>15</sup> [339 Recommendations from the RCIADIC - Common Grace](#)

<sup>16</sup> [Crisis of Aboriginal women in prison in Australia | Indigenous Rights | Al Jazeera](#)

<sup>17</sup> Taft AJ, Shankar M, Black KI, Mazza D, Hussainy S, Lucke JC. Unintended and unwanted pregnancy in Australia: a cross-sectional, national random telephone survey of prevalence and outcomes, (2018) 209(9)

various forms of disadvantage and marginalisation. Access to goods and services is undermined by cost, a lack of available and accurate information and gaps in training, expertise and availability of health professionals. For many women, the public hospital servicing their catchment area is a Catholic hospital. Catholic hospitals ascribe to a code of ethics under which contraception and abortion are impermissible, undermining medical judgment and compromising healthcare.<sup>18</sup> Costs and a lack of sexual and reproductive health literacy, particularly among young women are associated with reliance on less effective forms of contraception<sup>19</sup> and low uptake of long-acting reversible contraceptives.<sup>20</sup>

Since Australia's last reporting cycle, laws decriminalising abortion have been enacted in Queensland, New South Wales and South Australia and safe access zone legislation now operates nationwide, ending the targeted harassment of patients seeking - and staff providing - abortions. There nevertheless remain significant barriers to affordable abortion care. A lack of harmonisation of state and territory laws generates confusion and uncertainty. Gestational limits for abortion on request range from 16 to 24 weeks, and some women have been denied healthcare which is available in other parts of the country while others must travel substantial distances to access services.

Inadequate public funding has led to a lack of abortion services in public hospitals and a preponderance of abortions being performed in the private health system. The cost of abortion is compounded for many women by costs associated with travelling substantial distances to access healthcare. There is a significant unmet need for access to medical abortion services which is exacerbated by unnecessarily onerous conditions on the prescribing and dispensing of medication used for medical abortion.

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*Medical Journal of Australia* 407; SPHERE, Sexual and Reproductive Health Coalition, Increasing access to effective contraception in Australia, 20 July 2022 <https://www.spherecre.org/coalition-outputs>; Sifris R and Penovic T, 'Barriers to abortion faced by Australian women before and during the COVID-19 Pandemic' Vol 86 (2021) *Women's Studies International Forum*, Article 102; MSI Australia, Australian Abortion Access Scorecard, updated 15 July 2022 at <https://www.msiaustralia.org.au/abortion-access-scorecard/>  
<sup>18</sup> See for example Annika Blau, 'In Good Faith', *ABC RN* Background Briefing (3 December 2022) <https://www.abc.net.au/news/2022-12-03/catholic-hospitals-denying-womens-healthcare-australia-hospitals/101712558>

<sup>19</sup> See for example D Mazza, D Bateson, M Frearson, P Goldstone, G Kovacs and R Baber, 'Current Barriers and Potential Strategies to increase the use of long acting reversible contraception to reduce the rate of unintended pregnancies in Australia: An expert roundtable discussion' 15 (2017) *Australia and New Zealand Journal of Obstetrics and Gynaecology*, 206-212.

<sup>20</sup> Ibid; Sarah Larkin and Priscilla Page, 'Access to Contraception for Remote Aboriginal and Torres Strait Islander Women: Necessary but not sufficient' (2016) 205 (1) *Medical Journal of Australia* 18-19.

The sexual and reproductive health and rights of women and girls with a disability have been undermined by harmful stereotypes and prejudices, including the assumption that they lack the capacity to manage menstruation, control their fertility and care for children. These assumptions have rationalised practices such as sterilisation, abortion and the administration of contraception without consent which have robbed women and girls with disability of autonomy and violated their human rights.

## **INTERSECTIONAL DISCRIMINATION**

The Committee has recognised the intersectional forms of discrimination experienced by some women, including refugee and migrant women, culturally and linguistically diverse women, women with a disability, women experiencing family violence and women living in rural and regional Australia.

It has furthermore recognised that Aboriginal and Torres Strait Islander women and girls experience disproportionately high levels of social disadvantage and discrimination in a number of spheres, including housing, domestic violence, legal protection, healthcare, education, employment and the criminal justice system. The effects of colonisation, intergenerational trauma, and loss of spiritual and cultural connections have a deep and ongoing impact. As recognised by the Committee, Aboriginal and Torres Strait Islander women face discriminatory treatment in the provision of healthcare and associated reduced life expectancy; lower rates of education, especially in rural areas; and higher incidence of domestic and family violence.<sup>21</sup>

The Australian Human Rights Commission's *Wiyi Yani U Thangani* Report recommends that culturally sensitive judicial processes, such as Koori Courts, should be extended to all jurisdictions; detention and policing treated as a last result; and increased representation of Indigenous people be increased in the legal profession, and Indigenous people be trained to provide legal assistance.<sup>22</sup>

Australian governments must continue to invest in developing culturally safe solutions to the discrimination and disadvantage experienced by Aboriginal and Torres Strait Islander women

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<sup>21</sup> CEDAW, 'Concluding observations on the eighth periodic report of Australia' (25 July 2018) ('Concluding Observations').

<sup>22</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani* (Women's Voices): Securing Our Rights, Securing Our Future Report, 2020



and girls. This includes developing and supporting Indigenous-controlled community services across sectors, especially legal assistance, housing, family and domestic violence, and health care. They must continue to actively engage Aboriginal and Torres Strait Islander communities, and elevate their voices throughout the consultation, policy development, implementation, and evaluation processes. This involves addressing discrimination on the basis of sex/gender, and systemic racism against Aboriginal and Torres Strait Islander people.

## **RECOMMENDATIONS**

### **ALHR recommends that Australia should –**

- Enact a federal charter of human rights which includes a guarantee of gender equality.
- Increase funding for domestic, family and sexual violence services, including additional funding for targeted services to meet the needs of specific communities (including women with disability, Aboriginal and Torres Strait Islander women, women living in rural and remote areas, older women, LGBTQIA+ people and people who are culturally and linguistically diverse communities) and address the intersectional forms of disadvantage experienced by their members.
- Improve robust and comprehensive data collection relating to sexual harassment and violence against women across Australia.
- Reduce the number of women and girls in the criminal and youth justice system by investing in prevention and diversion programs and addressing the root causes of incarceration such as violence against women and poverty;
- Work with Aboriginal and Torres Strait Islander communities, fund community-led prevention and diversion programs under article 4 of CEDAW to accelerate the equal enjoyment of human rights and fundamental freedoms.
- Ensure compliance with Australia's obligations under CEDAW and other human rights instruments and international standards in prisons and youth detention facilities by
  - investing in staff training and monitoring to ensure that staff in accordance with international standards, including the Beijing Rules and Bangkok Rules, including gender-sensitive and culturally appropriate
  - ensuring that screening is properly undertaken of all women and girls in detention to ensure access to appropriate healthcare and other services
  - establishing procedures to ensure that allegations of abuse and mistreatment are promptly and properly investigated.

- o Ending invasive and humiliating screening methods such as strip searches.
- Subsidise the cost of reproductive healthcare and amend the Therapeutic Goods Administration and Pharmaceutical Benefits Advisory Committee approvals process to address the overregulation of medical abortion.
- Enact national legislation to ensure that sterilisation, abortion and the administration of contraception is only carried out with free, prior and informed consent.
- Work with Aboriginal and Torres Strait Islander communities to identify and address issues, and develop community-focussed and Indigenous led solutions to eliminate discrimination against Aboriginal and Torres Strait Islander women and girls.
- Invest in culturally safe solutions to discrimination experienced by Aboriginal and Torres Strait Islander women and girls.

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