

Submission on the National Strategy to Achieve Gender Equality

Office for Women

Department of the Prime Minister and Cabinet

Ngunnawal Country, 1 National Circuit Barton ACT 2600

PO Box 6500 CANBERRA ACT 2600

By email: em@aph.gov.au

APRIL 2023

Australian Lawyers for Human Rights Inc.

PO Box A147, Sydney South NSW 1235 president@alhr.org.au alhr.org.au Dear Office for Women,

National Strategy to Achieve Gender Equality

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide a submission to the Department of Prime Minister & Cabinet as part of the consultation on the National Strategy for Gender Equality (**the National Strategy**)

Acknowledgements

Australian Lawyers for Human Rights (**ALHR**) acknowledges the traditional owners and custodians of the lands on which we work across Australia as the first people of this country. We recognise that the land belonging to these peoples was never ceded, given up, bought, or sold. We pay our deep respect to Elders past, present and emerging.

About Australian Lawyers for Human Rights

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees.

ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international law and human rights law in Australia to:

- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Promote and support lawyers' practice of human rights law in Australia;
- Engage internationally to promote human rights and the rule of law.

Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Executive summary

Australia's latest Status of Women Report Card, released 8 March 2023, made plain that women are still facing persistent, entrenched and systemic inequality. Women in Australia are twice as likely to experience sexual harassment compared to men and are the fastest growing group of people experiencing homelessness.¹ As a consequence of these and many

¹ Status of Women Report Card 2023 (pmc.gov.au)

other factors, the World Economic Forum currently ranks Australia 43rd in the world for gender equality; a grim result for a wealthy ,developed Western liberal democracy.²

Gender stereotyping continues to pervade Australian society, leading to discrimination on the basis of gender that has a disproportionate impact on women and girls who experience intersecting forms of discrimination, including Aboriginal and Torres Strait Islander women, refugees and migrant women, and women with disabilities. 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.³ Women bear a disproportionate share of unpaid work⁴ and men's superannuation balances on retirement are on average twice as large as women's.⁵ Women aged 55 and over are at higher risk of poverty and represent the fastest growing group experiencing homelessness in Australia.⁶

On 15 March 2021, tens of thousands of Australians marched across the nation to demand an end to gender-based violence, harassment 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, demands for workplace sexual harassment legislation have since been realised and constitute an important step in Australia's national strategy for gender equality.

This legislation will be considered below, as part of a discussion of key areas of importance for Australia's national strategy on gender equality, namely:

- violence against women;
- workplace sexual harassment;
- reproductive rights;
- intersectional discrimination:
- financial inequality;

⁴ Ruppanner, 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-ofunpaid-h

ousework-they-do-76008>.

² WEF GGGR 2022.pdf (weforum.org)

³ Gender pay gap data | WGEA

⁵Australian Government, The Senate Economics References Committee, 'A husband is not a retirement plan', Achieving economic security for women in retirement', 29 April 2016.

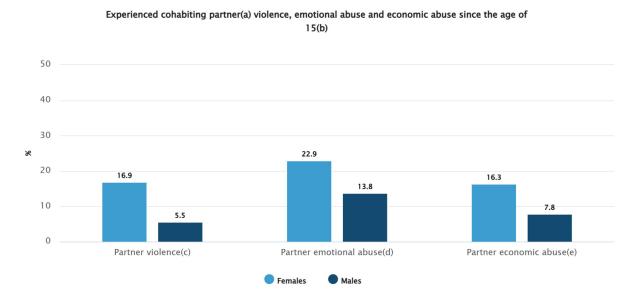
⁶ Australian Human Rights Commission, *Older Women's Risk of Homelessness Background Paper*, 4 April 2019; R Tanton, Y Vidyattama, J McNamara, Q Ngu Vu & A Harding, Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians (2008) p 15.

- gender bias in healthcare;
- gender and the climate crisis;
- business and human rights through the gender lens; and
- lack of legislated human rights protections.

The major issues affecting gender inequality in Australia: What should our national strategy focus on?

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.⁷ Aboriginal and Torres Strait Islander women experience significantly higher levels of violence than non-Indigenous women, with around three in five Firsr Nations women having experienced physical or sexual violence by an intimate male partner.⁸



Source: Australian Bureau of Statistics, Gender Indicators

On 17 October 2022, the federal, 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

⁷ Australian Bureau of Statistics, 2016 Personal Safety Survey, Australian Government, 2017.

⁸ 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.

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 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.

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.

ALHR submits that the National Strategy must address the urgent need for significantly increased long-term, secure federal, state and territory funding for domestic, family and sexual violence services, and for organisations promoting and protecting women's human rights more generally..

ALHR further submits that the National Strategy addresses the urgent 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.

RECOMMENDATIONS:

1. That Australia increase federal, state and territory 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+ and culturally and linguistically diverse communities) and address the intersectional forms of disadvantage experienced by their members.

2. That Australia improve robust and comprehensive data collection relating to sexual harassment and violence against women across Australia.

Workplace sexual harassment

On 28 November 2022, the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 was enacted in response to the findings of the Australian Human Rights Commission's National Inquiry into Sexual Harassment in Australian Workplaces (National Inquiry). 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 disabilities were more likely to experience sexual harassment.¹⁰

While the *Sex Discrimination Act 1984* (Cth) specifically addresses workplace sexual harassment, progress over the last four decades has been slow and Australia now lags behind other comparable countries.¹¹ The National Inquiry found that current approaches to preventing and responding to workplace sexual harassment have focused on prohibiting sexual harassment and establishing complaint mechanisms for workers wishing to report it, and have typically been 'reactive, legalistic and often contribute to ongoing (albeit unintended) harm to workers.¹²

Changes introduced by the new legislation include:

- The introduction of 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 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;

⁹ Australian Human Rights Commission, Respect@Work: National Inquiry into Sexual Harassment in Australian, January, 2020.

¹⁰ Ibid 92.

¹¹ Ibid 9.

¹² Ibid 618.

- 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
- 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. However, more can be done to stamp out sexual harassment against women in all environments.

Drivers of harassment against women and girls arise from gender discriminatory institutional, social and economic structures, social and cultural norms, and organisational, community, family and relationship practices that together create environments in which women and men are not considered equal, and harassment against women (of any kind) is tolerated and even condoned.

Factors such as the condoning of violence against women and girls, men's control of decision-making and limits to women's independence, rigid gender roles and identities and male peer relations that emphasise aggression and disrespect towards women contribute to these ongoing issues.¹³

The National Community Attitudes towards Violence Against Women Survey, found that the strongest influence of attitudes toward violence against women among young people is their understanding of the nature of violence and their attitudes toward gender equality.¹⁴

27% of survey respondents believed men make better political leaders while 28% endorse attitudes supportive of male dominance of decision-making in relationships (a dynamic identified as a risk-factor for gender-based violence).

Further, in 2013, more than 4 in 10 Australians were found to believe that rape results from men not being able to control their need for sex while many Australians are less inclined to view non-physical forms of control such as harassment and intimidation as 'serious' when compared to physical violence and forced sex.¹⁵ Research such as this indicates that significant efforts are required to address widespread misconceptions about gender roles in the family, household and intimate relationships and also to provide skills for the development of more equal and respectful relationships.

¹⁴ VicHealth, Australians' attitudes to violence against women: 2013 National Community Attitudes Towards Violence against Women Survey – Research Summary, September 2014, available at: https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes -towards-violence-against-women-survey.

¹³ Chapter 2 – Parliament of Australia (aph.gov.au)

¹⁵ VicHealth, Australians' attitudes to violence against women: 2013 National Community Attitudes Towards Violence against Women Survey – Research Summary, September 2014, available at: https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes -towards-violence-against-women-survey.

RECOMMENDATIONS:

- 1. That Australia develop and fully fund more evidence-based policy and educational programs to change the social norms and values that sustain sexual harassment, which may include:
 - challenging the normalisation of violence as an expression of masculinity or male dominance;
 - preventing exposure to violence and supporting those affected to reduce its consequences;
 - addressing the intersections between social norms relating to alcohol and gender;
 - reducing backlash by engaging men and boys in gender equality, building relationships skills and social connections;
 - promoting broader social equality and addressing structural discrimination and disadvantage.

Reproductive rights

Australia's National Women's Health Strategy 2020-2030 seeks to advance access to reproductive healthcare in line with Australia's obligations under the United Nations Convention on the Elimination of Discrimination Against Women (**CEDAW**). The Albanese government has taken some steps towards advancing reproductive rights, including establishing a National Women's Health Advisory Committee. Presently, an inquiry is being undertaken into universal access to reproductive healthcare.

Access to reproductive healthcare services is undermined by cost, a lack of available and accurate information, gaps in training, expertise and availability of health professionals. People experiencing disadvantage and marginalisation or simply living in regional and remote areas are still disproportionately affected by gaps in access to effective contraception and affordable abortion care.¹⁶

For many people, the public hospital servicing their catchment area is a Catholic hospital. Catholic hospitals adhere to a code of ethics under which contraception and abortion are impermissible. This undermines women's internationally recognised human right to safe and

¹⁶ 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) *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//

accessible abortion services and compromises their healthcare.¹⁷ Costs and a lack of sexual and reproductive health literacy, particularly among young people , are associated with reliance on less effective forms of contraception¹⁸ and low uptake of long-acting reversible contraceptives.¹⁹

Laws decriminalising abortion have been enacted in the Australian Capital Territory in 2002, Victoria in 2008, Tasmania in 2013, the Northern Territory (NT) in 2017, Queensland in 2018, New South Wales in 2019 and South Australia in 2021. Safe access zone legislation now operates nationwide, ending the targeted harassment of patients seeking - and staff providing - abortion services. 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. The practical impact of this disparity is that some people may be denied healthcare which is available in other parts of the country while others must travel substantial distances to access the services they need

Further, inadequate public funding has led to a lack of abortion services in public hospitals and a preponderance of abortions being performed in the private healthcare 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.

The sexual and reproductive health and rights of people with disability have been undermined by harmful stereotypes and prejudices, including the assumption that people living with disability lack the capacity to manage menstruation, control their fertility and care for children. These assumptions have rationalised practices such as forced sterilisation, forced abortion and the forced administration of contraception without informed consent.

Such practices rob women and girls with disability of bodily autonomy and violate Australia's international legal obligations under CEDAW, the Convention Against Torture, Cruel Inhuman or Degrading Treatment or Punishment and the Convention on the Rights Persons with Disabilities.

UN treaty bodies have repeatedly called on Australia to introduce national uniform legislation to ensure that the use of sterilisation, abortion and the administration of contraception can

¹⁷ 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

¹⁸ 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.

¹⁹ 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.

only be carried out with prior, free and fully informed consent.²⁰ Recommendations have also called on Australia to take immediate steps to replace substitute decision-making with supported decision-making and repeal all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned. ALHR stresses that these recommendations should be adopted as a matter of urgency.

RECOMMENDATIONS:

- 1. To facilitate access to contraception, ALHR recommends that Australia ensure:
 - The cost of contraception be subsidised to ensure that cost is not a barrier to access.
 - Public hospitals under their funding arrangements should be required to provide contraception services.
 - Training of health professionals should be directed to increasing knowledge of contraception, including long-acting reversible contraception
 - Community education should be directed to increasing understanding within the community about methods of contraception, including long-acting reversible contraception.
 - Support and training should be provided for Aboriginal and Torres Strait Islander doctors, nurses, midwives and health workers to facilitate culturally safe healthcare and address staff shortages.
- 2. To remove barriers to abortion access, ALHR recommends that Australia ensure:
 - Public hospitals under their funding arrangements be required to provide abortion services and not engage in conduct that discourages abortions
 - The Therapeutic Goods Administration and Pharmaceutical Benefits Advisory Committee approvals should be amended to address the overregulation of medical abortion, including
 - o the 63 day gestational limit,
 - o simplifying registration requirements for doctors and pharmacists, and
 - o expanding the range of providers of MS-2 Step to nurse practitioners and midwives.
 - Increase training of health professionals in abortion care, both medical and surgical, to build expertise, address abortion stigma and increase services.

²⁰ Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Australia*, UN Doc CEDAW/C/AUS/CO/7 (30 July 2010) [42]. See also Committee on the Rights of the Chid, *Concluding Observations: Australia*, 60th sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) [57]; Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of Australia*, 10th sess, UN Doc CRPD/C/AUS/CO/1 (21 October 2013) [39], [40].

- Increasing public awareness of medical abortion and referral obligations of health professionals with a conscientious objection.
- Increase the training of health professionals with respect to the obligation to refer and investigate and sanction non-compliance.
- Increase the training of health professionals with respect to identifying reproductive coercion and supporting women in securing reproductive autonomy and access to healthcare.
- Provide support and training for Aboriginal and Torres Strait Islander doctors, nurses, midwives and health workers to facilitate culturally safe healthcare.
- 3. That Australia introduce national uniform legislation to ensure that the use of sterilisation, abortion and the administration of contraception can only be carried out with prior, free and fully informed consent.
- 4. That Australia take immediate steps to replace substitute decision-making with supported decision-making and repeal all legislation that authorises medical intervention without the free and informed consent of the persons with disabilities concerned.

Intersectional discrimination

Intersectional forms of discrimination are 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. 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 and care and protection system.

The effects of invasion, colonisation, intergenerational trauma, and loss of spiritual and cultural connections have a deep and ongoing impact. First Nations r women and girls 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.²¹

The Australian Human Rights Commission's Wiyi Yani U Thangani Report recommends that:

- culturally sensitive judicial processes, such as Koori Courts, be extended to all jurisdictions;
- detention and policing be used as a means of last resort: and

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

 representation of First Nations people be increased in the legal profession, and First Nations people be trained to provide legal assistance.²²

ALHR submits that the National Strategy should address the urgent need for federal, state and territory governments to continue to invest in developing culturally safe solutions to the discrimination and disadvantage experienced by First Nations women and girls. This includes:

- developing and supporting First Nations-controlled community services across sectors, especially legal assistance, housing, care and protection, family and domestic violence, youth justice and health care.
- actively engaging with First Nations communities in order to ensure proper consultation is undertaken in relation to policy development, implementation, and evaluation processes. This involves addressing discrimination on the basis of sex/gender, and systemic racism against First Nations people.

RECOMMENDATIONS:

- That all levels of government in Australia 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; and
- 2. That all levels of government in Australia work with Aboriginal and Torres Strait Islander communities to identify and address issues of gender inequality and develop community-focussed and First Nations Indigenous led solutions to eliminate discrimination against Aboriginal and Torres Strait Islander women and girls; and
- 3. That all levels of government in Australia Invest in culturally safe solutions to discrimination experienced by Aboriginal and Torres Strait Islander women and girls.

Financial inequality

Gender wage gap

Australia's current national gender pay gap is 14.1%. As of May 2022, the average weekly ordinary full-time earnings across all industries and occupations for women was \$1,609.00 compared to the average weekly ordinary full-time earnings for men - \$1,872.90.²³ This means that on average, women earned \$263.90 less than men while women from migrant or refugee backgrounds and First Nations women are likely to experience larger wage gaps.

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

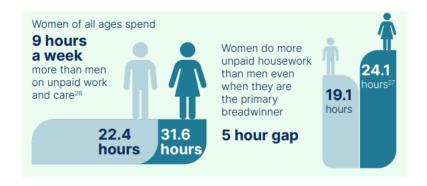
²³ Gender pay gap data I WGEA



Source: Australian Bureau of Statistics, Gender Indicators

Relevant to this issue is the need to recognise and value unpaid work. The 2016 census broadly revealed that women undertake between 5-14 hours of unpaid housework a week compared to men who take on less than 5 hours per week.²⁴ This has real and long-term impacts on economic outcomes for women, particularly in terms of their paid employment. Research shows that women consistently trade in time in paid employment for greater time in domestic work even when their resources are on par with men.

When taken together with the other drivers of poverty affecting women described above (rising housing costs, underemployment or joblessness, the disproportionate share of childcare and household tasks they take on, and the ineffectiveness of income support payments particular for single parents), women are significantly at risk of entering into poverty and staying there for lengthy periods or even life.



²⁴ Ruppanner, L. Census 2016: Women are still disadvantaged by the amount of unpaid housework they do 11 April 2017, The Conversation http://theconversation.com/census-2016-women-are-still-disadvantaged-by-the-amount-ofunpaid-housework-they-do-76008.

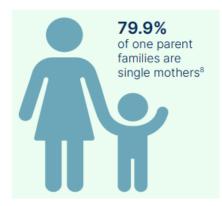
RECOMMENDATION:

1. That Australia continue work on closing the gender pay gap, including consideration of policy proposals extending reporting requirements of employers and mandating equal pay transparency.

Poverty

Women are 3 times more likely to experience poverty following separation or divorce, and twice as likely following the death of a partner. Women also suffer adverse impacts from life events for longer; the poverty risks for women remain at the same heightened level for 3 or more years after a relationship breakdown or the death of a partner.²⁵

Further, the sole-parent population in Australia has more than doubled since 1974. In 2002 there were 508,300 one-parent families with children aged 0-14 years. In 1997 there were 162,800 sole parent families with at least one child under the age of 5 years. Most sole parents are women (79.9% in 2022). Among different family types, sole parent families have the highest poverty rates, at 35%. Children in sole parent families, with a poverty rate of 44%, are more than three times as likely to live in poverty as children in couple families, who have a poverty rate of 13%.



One of the major drivers for this is the inadequate social security system in Australia and the historically low rates of income supplement provided. Research by the Australian National University's Centre for Social Research and Methods shows that the introduction of COVID-19 supplement payments to social security income reduced the proportion of single parent families living below the poverty line from 39% to 17%. However, once the supplements ended, the ANU modelling estimated that child poverty rates for single parent families would rise above pre-pandemic levels to 41%. That same ANU modelling indicates that a 10% increase (around \$12 billion) in welfare spending by the Australian government would reduce poverty rates for people on JobSeeker from 88% to 34%.

Australia's welfare system locks single parent families (meaning mostly women) into poverty with little to no opportunity to escape. Successive governments have ignored data and evidence to suggest that even minor increases in income support payments can alleviate poverty concerns for a significant proportion of single-income families currently experiencing, or on the edge of, poverty. As discussed above, this perpetuates the cycle of poverty through generations, contributing to the problem in years to come.

Australia's current approach to single parent payments does not accord with the principles underlying core international human rights treaties to which we are a party, including the

²⁵ BCEC-Poverty-and-Disadvantage-Report-March-2022-FINAL-WEB.pdf

CEDAW, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

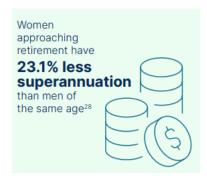
Under the current scheme, single parents, most of whom are women, receive about \$961 a fortnight, but are shifted to jobseeker when their child turns eight, receiving about \$176 less a fortnight. This forces single parent families back into poverty and perpetuates gender inequality.

Single parent families should retain access to appropriate payments until children turn 16 years of age, at a minimum.

RECOMMENDATION:

- Reflecting Australia's obligations under the ICESCR to protect the right of women and girls to an adequate standard of living, including adequate food, clothing and housing and to a continuous improvement in living conditions, Australia must immediately increase income support payments to a level that enables women to afford basic needs and reduce instances of poverty, and intergenerational poverty, among women (and others).
- 2. That Australia become a state party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).

Retirement outcomes



The fastest growing demographic of homeless people in Australia is women over 55 who lose housing security in times of relationship/family breakdown or the death of a partner - increasing 31% between 2011 and 2016.²⁶

While there are a range of reasons that contribute to unequal superannuation retirement balances between men and women, predominately the leading factor is time out of

the workforce to be the primary carer of young children.²⁷ In the years approaching retirement age, the gender superannuation gap can be anywhere between 22% and 3%. The median superannuation balance for men aged 60-64 years is \$204,107 whereas for women in the same age group it is \$146,900, a gap of 28 percent. For the pre-retirement years of 55-59, the gender gap is 33% and in the peak earning years of 45-49 the gender gap is 35%.²⁸

²⁶ AHRC, 2019 -

https://humanrights.gov.au/our-work/age-discrimination/projects/risk-homelessness-older-women

²⁷ The Gender Superannuation gap: Addressing the options (kpmg.com)

²⁸ The Gender Superannuation gap: Addressing the options (kpmg.com)

More effort should be focused on improving gender equality at retirement age. KPMG, in their 2021 report on The Gender Superannuation Gap, identified the following 4 potential options:

- time-limited rebates of the superannuation contributions tax;
- the creation of a supplementary concessional contributions cap;
- removing the five-year limit on utilisation of concessional contributions caps relating to years spent as a primary carer; and
- top-up contributions for low-income primary carers.

More research should be done to identify and verify the viability of suggestions to reduce the gender superannuation gap and new policy proposals to level the playing field at this critical time of life should be prioritised.

RECOMMENDATION:

1. That Australia invest in research (and subsequent proposals) to identify and verify the viability of policy proposals to reduce the gender superannuation gap as a national priority.

Gender bias in healthcare

Gender bias in healthcare is pervasive and can have a significantly negative effect on medical outcomes. Historically, and consistently, in medical research the male body was considered the norm. Consequently, most research data have been drawn from cis-gendered males and generalized to females and those who are intersex, transgender, or sit elsewhere on the gender spectrum.²⁹

'Failure to adequately appreciate the differences between and across the sex and gender spectrum risks compromising the quality of care and increasing costs due to inappropriate allocation of resources'.³⁰ Physiological differences extend well beyond reproductive functions, encompassing the cardiovascular, respiratory, musculoskeletal, immunological and gastrointestinal systems along with neurological and adrenal function. For example, pain has biological aspects. There are physiological differences in pain signalling between sexes, and also cultural factors which can include differences in how people report pain and how a medical practitioner's gender influences their understanding of pain treatment.³¹

²⁹ Merone L, Tsey K, Russell D, Nagle C, Mind the gap: reporting and analysis of sex and gender in health research in Australia, a cross-sectional study, *Women's Health Report* 3:1, (2022) 759–767, 771.

³⁰ The Sex and Gender Sensitive Research Call to Action Group, Sex and gender in health research: updating policy to reflect evidence, *Medical Journal of Australia*, 2020 212(2), 57.

³¹ Londa Schiebinger, Seth S Leopold, Virginia M Miller, Editorial policies for sex and gender analysis, *The Lancet*, Vol 388 December 10, 2016, 2841.

In 2016, The Lancet, published an exhortation to other journals to standardise guidelines for reporting sex and gender, arguing that taking adequate account of sex and gender in data evaluation needs to be taken in order to improve the health of all patients.³²

In a 2022 report, Mind the Gap: Reporting and Analysis of Sex and Gender in Health Research in Australia, A Cross-sectional Study, the authors determined that, as of 2019, females accounted for approximately half of the participants in Australian health research.³³ The authors considered that this was likely the result of successful, albeit recent, efforts to increase female participation in clinical trials.³⁴ Despite this, the authors concluded that despite the fact that inclusion of women in clinical research appears balanced, when the research was broken down by discipline, it became apparent that women were overrepresented in specialities that were perceived to be female dominated (such as psychiatry) and under-represented in specialities such as cardiology and nephrology.³⁵ This imbalance can reinforce gender stereotypes that can be harmful to women.

Furthermore, in research where women are adequately represented, there is rarely gender-based analysis of the clinical research while that intersex and gender non-binary people were underrepresented 'almost to the point of nonexistence outside of the study of sex and gender'.³⁶

RECOMMENDATIONS:

- That Australia design and ensure research frameworks that adequately consider males, females and those who are intersex, transgender, or sit elsewhere on the gender spectrum.
- 2. That sex and gender-based analysis and reporting of healthcare data, with appropriate privacy protections, be undertaken.
- 3. That Australia legally protect the right to access healthcare without discrimination.

³³ Merone L, Tsey K, Russell D, Nagle C, Mind the gap: reporting and analysis of sex and gender in health research in Australia, a cross-sectional study, *Women's Health Report* 3:1, (2022) 759–767, 771.

³² Ibid.

³⁴ Merone L, Tsey K, Russell D, Nagle C, Mind the gap: reporting and analysis of sex and gender in health research in Australia, a cross-sectional study, *Women's Health Report* 3:1, (2022) 759–767, 771

³⁵ Merone L, Tsey K, Russell D, Nagle C, Mind the gap: reporting and analysis of sex and gender in health research in Australia, a cross-sectional study, *Women's Health Report* 3:1, (2022) 759–767, 771.

³⁶ Ibid.

Climate Crisis and gender equality

The impacts of climate change and environmental degradation are not "gender neutral". Women and girls experience the greatest impacts of climate change which amplifies existing gender inequalities, and poses unique threats to their livelihoods, health and safety.³⁷ Climate change is described by UN Women as a "threat multiplier" because it escalates systemic political, economic and social inequities.³⁸ The climate crisis will therefore have a highly significant cumulative effect on the physical, economical and emotional wellbeing of women in Australia.

While the enjoyment of human rights by women and girls is connected to all manner of climate impacts, we note that these can be most readily observed by assessing community recovery efforts following extreme weather events. The activities in the aftermath of these events, such as the clean-up, care of children, employment impacts and food insecurity, disproportionately impact women.³⁹

Firstly, women bear a larger burden of unpaid work following natural disasters, and are therefore more likely to be economically threatened as a result of their increased frequency.⁴⁰ This, in turn, has the impact of marginalising women and further amplifying their existing need for government support.⁴¹ Employment vulnerabilities and climate induced food scarcity, which the UN Development Programme estimates will increase the cost of world food prices by 30-50%, will be an additional repercussion faced by women.⁴²

Additionally, the increased costs of living for women could further contribute to energy poverty, particularly amongst low-income households in Australia.⁴³ It is widely acknowledged that lack of access to energy has a strong gender dimension – particularly in developing countries across the Asia-Pacific – due to the impact on economic and educational opportunities.⁴⁴ Poverty also impacts women's reproductive rights and autonomy over their health; including access to contraception, the ability to carry and deliver, and to raise a family, and is a key contributing factor to child, early and forced marriage of women

39

https://www.broadagenda.com.au/2019/far-from-equal-the-gendered-impacts-of-climate-change-australia/

https://www.broadagenda.com.au/2019/far-from-equal-the-gendered-impacts-of-climate-change-australia/;

https://www.aihw.gov.au/getmedia/795385cc-6493-45c9-b341-7ddf6006d518/aihw-aus-227.pdf.aspx?inline=true

44

https://www.oecd-ilibrary.org/sites/c7cbe91b-en/index.html?itemId=/content/component/c7cbe91b-en

³⁷ United Nations Women, "Explainer: How Gender inequality and climate change are interconnected https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected?gclid=Cj0KCQjw0tKiBhC6ARIsAAOXutnahq7AWWd32sdUuRtckoe AEGVlpgY38iqdn-O1UOFuFRQFH23dRYUaAif_EALw_wcB

³⁸ IBID

⁴⁰ https://www.globalcitizen.org/en/content/how-climate-change-affects-women/

⁴² UNDP, Global Gender and Climate Alliance, "Gender Climate Change and Food Security".

⁴³ Ibid.

and girls.⁴⁵ In Australia, forced marriage is the most commonly investigated form of human trafficking and slavery.⁴⁶

Further, a growing body of evidence also indicates that violence against women increases in the aftermath of natural disasters.⁴⁷ It has been noted that disasters can also intensify violence when women are separated from support networks such as family and friends that help mitigate violence.⁴⁸ Analysis of the Australian Black Saturday bushfires in 2009 demonstrated that in the months after the fires, the urgency of disaster recovery meant that domestic and family violence was deprioritised at a systems level.⁴⁹

Aboriginal and Torres Strait Islander women and girls are especially vulnerable to the impacts of climate change due to their deep connection to Country, their many remote communities already living in the driest inhabited continent on the planet and most profoundly due to systemic racism, discrimination, marginalisation and disadvantage within Australian society.

For those Aboriginal and Torres Strait Islander women and girls in remote parts of Australia, increases in temperature will reduce the amount of bush tucker and other native foods available. For those in coastal areas, rises in sea levels may force people off their land. As noted by the Australian Indigenous HealthInfoNet, this is especially concerning considering the connection that Aboriginal and Torres Strait Islander women and girls have to their Country, and may result in poor mental health and other social issues. Extreme weather events such as cyclones and floods will affect the infrastructure in remote Aboriginal and Torres Strait Islander communities, and these communities may be cut-off from services for long periods of time. The full and effective enjoyment of the full range of rights articulated in the CEDAW and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is likely to be impacted by climate change.

RECOMMENDATION

- 1. That Australia ensure gender equality is central to climate action and mitigation policies and disaster preparedness..
- 2. That Australia legally recognise and protect the right to a clean, healthy and sustainable environment.

https://www.broadagenda.com.au/2019/far-from-equal-the-gendered-impacts-of-climate-change-australia/

⁴⁵ OHCHR, Preventing and Eliminating Child, Early and Forced Marriage, page 7.

⁴⁶ Australian Institute of Criminology, Research Report 11, "When saying no is not an option: Forced marriage in Australia and New Zealand" (2018), Samantha Lyneham and Samantha Bricknell, page 2. ⁴⁷ Doc-043-Impact-on-Women-Position-Paper.pdf (genderanddisaster.com.au)

⁴⁹ The Way He Tells It (genderanddisaster.com.au)

Business and human rights through the gender lens

Women and girls, by virtue of their gender and age, may be subjected to human rights violations in the business sector. Understanding the human rights protections which women and girls require within the business sector is vital to ensuring their rights are protected. Further, whilst the fundamental human rights principles of universality and inalienability are widely accepted, there are people in society who, because of their gender, age, race, sexual orientation or religion, require special protection in order for their human rights to be respected and upheld. The importance, therefore, of applying a gender lens to business and human rights, cannot be understated.

Women experience, disproportionately, various forms of business-related human rights abuses. Such human rights violations are specifically related to their status as women, and can occur on a daily basis, impacting negatively on their personal, emotional and financial circumstances. These include, but are not limited to:

- Employment and workplace discrimination and abuse, including unequal pay, underpayments, wage theft, sexual harassment, violence and other forms of abuse (as noted above within this submission);
- b. Discrimination and abuse within the housing sector often resulting in eviction and/or homelessness for both the woman and her children;
- c. Discrimination and abuse in educational settings including universities and schools often impacting on a student's education and future career;
- d. Technology based harassment, including threats and abuse on social media; and
- e. Gender bias in recruitment through the use of Artificial Intelligence (AI) resulting in inequality in workplace recruitment.

Sexual harassment in education

nd-sexual.

A national survey of 30,000 students at thirty-nine Australian universities conducted by the AHRC⁵⁰ showed that in 2015-16 women were three times more likely to be sexually harassed in a university setting. In 2016 this was reduced to twice as likely. The survey found that 6.9% of students were sexually assaulted. It also found that victims knew the perpetrator in over half of all the sexual assaults, and in 45% of sexual harassments. Out of all the reported sexual assaults and sexual harassments, overwhelmingly, men were the perpetrators of both sexual assault and sexual harassment reported in the survey (71% for sexual harassment and 83% for sexual assault). In terms of reporting, 94% of the students

⁵⁰ 2017, Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities (2017), Australian Human Rights Commission, August, accessed 23/10/18 https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-a

who were sexually harassed and 87% of the students who were sexually assaulted, did not make an official report to their universities.⁵¹

Gender bias in recruitment through the use of artificial intelligence and automated decision-making

Discrimination in the recruitment of women into the workforce has been heightened, and reinforced, by Artificial Intelligence (AI) and automated decision-making algorithms routinely used for online recruitment. Most employment recruitment in Australia, with its uniquely dispersed population, depends on these online services from mass recruitment providers. The development of Amazon's AI recruitment algorithm was recently shown to be based on discriminatory data. The computer models were trained on resumes submitted over a 10-year period, most of which came from men. The computer learned that a successful resume was a man's resume. Algorithmic systems trained on past biased data which introduce correlations based on gender, race, religion, sexuality, or disability are inherently likely to recreate or even exacerbate discrimination seen in past decision-making. Si

Underemployment of women

An increased rate of underemployment for women continues an upward trend, with women representing 60.1% of all underemployed people in Australia.⁵⁴ There is an increase in casualcausal employment structures in Australia, whereby many women can be found, often because of their parenting obligations, and this type of work is frequently often unregulated and lacks workplace protections. The potential for women to be exploited in such workplaces is thereby increased.

The aforementioned challenges significantly aggravate longstanding human rights concerns for women in the business sector. These concerns are heightened further by biases, as a result of a woman's culture, race, disability, sexuality and age, and are exacerbated by financial and time commitments as a result of dependents with elder and childcare services often being inaccessible and expensive. In addition, social conditions for single mothers and their families in Australia have been made worse by the brutally streamlined social security

http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6202.0main+features10September%202018, accessed 29 October 2018

⁵¹ Australian Human Rights Commission, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, 2017.

https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf, accessed 23/10/18.

⁵² Cole, S., 2018, *Amazon Pulled the Plug on an AI Recruiting Tool that was Biased Against Women*, October 10, accessed 23/10/18 https://motherboard.vice.com/en_us/article/evwkk4/amazon-ai-recruitment-hiring-tool-gender-bias. Accessed 23 October 2018.

⁵³ L Edwards and M Veale (2017) 'Slave to the Algorithm? Why a right to an explanation is probably not the remedy you are looking for', Duke Law and Technology Review, Vol. 16, No. 1, p. 28,

https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1315&context=dltr

⁵⁴ Australian Bureau of Statistics,

measures. For example, in 2013, the sole parent pension was scrapped and replaced with unemployment benefits.

Workplace termination over pregnancy

Workplace termination over pregnancy remains an issue for women in the Australian workforce. For instance, tThe Fair Work Ombudsman (**FWO**) is prosecuting a Perth restaurant owner because in 2017 he allegedly objected to a female casual employee's appearance of being pregnant. The woman's employment was unofficially terminated. The FWO alleges that her casual shifts were reduced and cancelled at short notice by the employer. The FWO also alleges the employer told staff to cancel her shifts because he considered the waitress "looks disgusting" and, that the woman's pregnancy affected the standard of her work and her looks.

Underpayments and wage theft

Underpayments and wage theft is endemic among international students, backpackers and other temporary migrants in Australia.⁵⁶ As such, it is a core business and human rights concern and directly affects women and girls. Ensuring access to secure employment and an adequate and reliable income is a prerequisite fundamental to the enjoyment of a number of fundamental human rights. It is also particularly important in protecting people from other vulnerabilities, such as safeguarding them from homelessness and ensuring access to adequate healthcare.

Underpayments and wage theft are forms of labour exploitation which areis classified as modern slavery. A recent Federal Parliament inquiry into establishing a Modern Slavery Act in Australia recommended in its *Hidden in Plain Sight* report that the proposed Modern Slavery Act should, inter alia, include offences relating to labour exploitation.⁵⁷ Wage theft includes conduct which denies employees receiving the wage they are legally entitled to and can include:

An employer not paying the minimum wage;

http://parlinfo.aph.gov.au/parlInfo/

⁵⁵ Laurie Berg and Bassina Farbenblum, Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, University of NSW, November 2017, http://apo.org.au/system/files/120406/aponid120406-483146.pdf (accessed 22 November 2017). See also: 'Backpackers, international students suffer widespread wage theft, report finds', UNSW Newsroom, 21 November 2017, https://newsroom.unsw.edu.au/news/businesslaw/backpackers-international-students-suffer-widespreadwage-theft-report-finds (accessed 22 November 2017).

⁵⁶ Recommendation 1, Hidden in Plain Sight, Federal Parliament inquiry into establishing a Modern Slavery Act in Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017.

⁵⁷ Laurie Berg and Bassina Farbenblum, 'Wage Theft in Australia' (Findings of the National Temporary Migrant Work Survey, Migrant Worker Justice Initiative, 2017) 45.

- An employer not paying an employee;
- An employer not paying penalty rates, for work overtime, or for all hours worked;
- An employer not paying superannuation entitlements;
- The misclassification of workers (for example, engaged as an independent contractor instead of an employee); and
- The use of sham contracting arrangements.

Wage theft can be understood as a breach of economic and social rights, in particular the right to remuneration that represents fair wages and allows for a decent standard of living (Article 7, ICESCR). Women need to be protected from labour exploitation as the consequences of such exploitation can be dire and may result in further breaches of their human rights.

Housing Insecurity

Women experience housing insecurity primarily from having a low income.⁵⁸ Women are noted as having significant barriers to stable housing in capital cities in Australia, where the rental housing and purchasing properties is often prohibited for those on social welfare. Older Australian women are less likely to identify as homeless and seek related support, and their numbers have risen since 2011 to 31% since 2011.⁵⁹ Tenancies remain tenuous and discrimination that leads to terminated tenancy agreements, rejections and unfair breaches can be difficult to prove.⁶⁰ Discrimination by real estate agents and property owners seeking tenants is increasingly a problem amongst the LGBTI community and sole-parent families, especially among those with a low income.⁶¹

Focusing on one category almost inevitably obscures and oversimplifies other interpenetrating realities and concludes that theory and research on inequality, dominance, and oppression must pay attention to the intersections of, at least, race, gender, and class. The same can be said of the considering marginalisation and vulnerabilities faced by women without considering the interconnection of discrimination based on race, class, sexuality,

⁵⁸ Mercy Foundation et al, 2018, *Retiring into Poverty: A National Plan for Change Increasing Housing for Older Women.* accessed 23/10/18

https://www.mercyfoundation.com.au/wp-content/uploads/2018/08/Retiring-into-Poverty-National-Plan-for-Change-Increasing-Housing-Security-for-Older-Women-23-August-2018.pdf ⁵⁹ Ibid

⁶⁰ Carmody, J., 2018, Racial discrimination widespread in the private rental market, advocates warn, ABC Online, August 16, accessed 23/10/18

https://www.abc.net.au/news/2018-08-17/racism-in-the-rental-sector-wa/10129418

⁶¹ Parkinson, S., James, A., & Liu, E., 2018, *Navigating A Changing Private Rental Sector:*Opportunities and Challenges for Low-Income Renters, Australian Housing and Urban Research Institute (AHURI), accessed 22/10/18

⁶² Acker, J, *Inequality Regimes: Gender, Class, and Race in Organisations,* University of Oregon Sociologists for Women in Society Feminist Lecture (2006, August), p 442 (http://journals.sagepub.com/doi/pdf/10.1177/0891243206289499 accessed on 28 October 2018).

disabilities or age. Attempting to compartmentalise the various forms of discrimination is unlikely to give rise to a collective and effective approach to dealing with discrimination.

In relation to discrimination and vulnerabilities faced by women in the workplace, implement "family-friendly" measures for women which must be understood and promoted by men.⁶³ This is because family responsibilities continue to fall primarily on women in most societies and women's ability to participate in the paid economy is contingent on their care responsibilities within the home and community.⁶⁴ The business sector needs to be alert to these issues, and once alert they need to develop and implement policies to ensure women's rights are protected.

Lack of a human rights law framework perpetuates gender inequality

ALHR submits that significant gaps in the legal recognition and protection of the human rights of women and girls' in Australia perpetuates ongoing systemic gender inequality across all aspects of daily life. It is therefore absolutely integral for the National Strategy to be developed from within a human rights law framework so as to ensure that it complies with and reflects international best practise and standards.

Despite being one of eight nations involved in drafting the Universal Declaration of Human Rights and despite being a party to the core United Nations human rights treaties, Australia remains the only Western liberal democracy without a federal Bill of Rights or Human Rights Act. If our nation is to address inequalities faced by women and girls, then our governments and public entities need a framework that places human rights at the heart of all laws, policies and decisions and which provides women and girls with accessible remedies if their human rights are breached.

Australia must begin to develop a more robust culture of respect for the human rights of women and girls.

RECOMMENDATION:

 That Australia comprehensively incorporate its international legal obligations to respect, protect and fulfill the human rights of women and girls' into domestic legislation, including by enacting a federal Human Rights Act and state and territory Human Rights Acts.

⁶³ Chant, S & Pedwell, C, *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward* (2008, January) London School of Economics, p 25 (https://www.researchgate.net/publication/50862249_Women_Gender_and_the_Informal_Economy_An_Assessment_of_ILO_Research_and_Suggested_Ways_Forward accessed on 28 October 2018). ⁶⁴ Ibid, p 30.

Conclusion

Progress towards gender equality is stalling as a result of the pandemic, the climate emergency, and the fact that the world is suffering through the highest number of conflicts since the creation of the United Nations. We will not see global gender parity in our lifetimes. The World Economic Forum has reported that in 2022 global parity is 68.1% and at the current rate of progress it will take 132 years to close the global gender gap. Australia was most recently ranked 43rd in the Global Gender Gap Index Ranking.

The solutions to these significant challenges are rooted in human rights.

When we legally recognise and protect the human rights of women and girls we establish guardrails to ensure that none are left behind in a sustainable economy and modern democracy like Australia.

Australia, though its National Strategy, must strive for no less than a society based on gender equality where every person is able to share equally in the distribution of power and influence, have equal opportunities to achieve financial independence, have equal access to education, have equal opportunities to pursue interests and talents, share domestic and childcare responsibility equally and when all are free from any form of intimidation, coercion and violence on account of gender.

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au

Yours faithfully,

Kerry Weste President

Australian Lawyers for Human Rights

⁶⁵ World Economic Forum, *Global Gender Gap Report* 2022, July 2022, 32.

⁶⁶ Ibid.

⁶⁷ Ibid 5

⁶⁸ Ibid

ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.