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# Australia's compliance with the Convention on the Elimination of All Forms of Discrimination against Women

**Australian NGO Coalition Submission**

# About this report

This report to the United Nations Committee on the Elimination of Discrimination Against Women examines Australia's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women. The report is intended to inform the Committee's review of Australia during its 70th Session in July 2018.

The report has been prepared by a coalition of Australian non-government organisations (NGOs). The report was coordinated by Kingsford Legal Centre, Community Legal Centres NSW, the National Association of Community Legal Centres and Good Shepherd Australia New Zealand.

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# Australian NGO Coalition - CEDAW Shadow Report 2018


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*The term 'women' in this report is intended to be inclusive of people with intersex variations, trans women, and all those who identify as women.*

**ARTICLES 1-3: TREATY ENTRENCHMENT, DISCRIMINATION AND EQUALITY (LOIPRs 1, 6)**

Domestic human rights framework

Human rights are not comprehensively protected in Australia, leaving Australians without access to effective remedies. Australia does not have a national human rights act or bill of rights, and rights are not adequately protected in the Australian Constitution. Despite significant public support for a Human Rights Act,[1] successive governments have failed to enact such protection. Australia is yet to comprehensively enact CEDAW in domestic law.

**Australia should:**

- **Introduce a comprehensive, judicially enforceable federal Human Rights Act.**

- **Comprehensively enact CEDAW in legislation.**

Parliamentary Joint Committee on Human Rights (PJCHR)

The PJCHR's role is to scrutinise legislation for compliance with the core human rights treaties to which Australia is a party. However, the PJCHR has limited resources and time to consider bills. Its recommendations are not enforceable, and the government often ignores them. The PJCHR's effectiveness is limited as it is unable to conduct own-motion inquiries, and can only conduct inquiries on human rights issues on a reference from the Attorney-General. To date, the PJCHR has only conducted one inquiry.

**Australia should:**

- **Review the operation of the PJCHR to ensure it is appropriately funded and its recommendations are considered by Government in enacting legislation.**

- **Amend the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to enable the PJCHR to conduct own-motion inquiries; and to ensure consideration, follow up and oversight of recommendations and views of UN human rights mechanisms.**

- **Ensure that the PJCHR consults with the National Congress of Australia's First Peoples on legislation that affects Aboriginal and Torres Strait Islander peoples.**

National Human Rights Institution

The mandate and powers of the Australian Human Rights Commission (**AHRC**) remain limited. Determinations of the AHRC are unenforceable and there is no requirement for the Australian Government to implement, or even respond to, the Commission's recommendations. The financial resources allocated to the AHRC remain inadequate and there has been a substantial reduction in funding,[2] including further cuts of half a million dollars over the next five years.[3] Since the previous review, the Government has attacked the President of the AHRC and the independence of the AHRC.[4]

**Australia should:**

- **Strengthen the mandate of the Australian Human Rights Commission and ensure it has sufficient funding to effectively carry out its functions.**

Discrimination law

Australia does not protect equality and non-discrimination in its Constitution. Current anti-discrimination laws[5] in Australia are inadequate due to their inconsistency, limited scope, failure to address systemic or intersectional discrimination and wide exemptions.

While we welcome the 2013 expansion of protections in the *Sex Discrimination Act 1984* (Cth) (**SDA**) to include sexual orientation, gender identity and intersex status, many attributes remain unprotected, such as domestic/family violence survivor status.[6] Plans to consolidate federal anti-discrimination law were abandoned in 2013. The retention of separate legislation dealing with different grounds of discrimination makes it difficult for complainants who experience intersectional discrimination.

Numerous exemptions to discrimination law act as a defence to claims of discrimination. For example, permanent exceptions in the SDA for religious organisations mean that LGBTI people can be treated unfavourably at work or in education, without recourse.[7]

The discrimination complaints process relies on the person who has experienced discrimination to bring a complaint. The complaints process fails to adequately address the power imbalance between complainants and respondents, as complainants bear the onus of proof. As it is a costs jurisdiction, many complainants settle through confidential informal dispute resolution processes, limiting broader dialogue around systemic discrimination. The ordinary time limit for making complaints was reduced to 6 months in 2017,[8] and complainants must now seek leave to take their matters to court,[9] limiting access to effective remedies.

**Australia should:**

- **Enact a comprehensive Equality Act that addresses all the prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.**

- **Remove permanent exemptions from discrimination law that allow sporting clubs and religious organisations to discriminate against women.**

- **Amend the *Australian Human Rights Commission Act 198*6 (Cth) to reinstate the 12-month time limit to lodge a complaint of discrimination and to make the Federal Court and Federal Circuit Court no costs jurisdictions for discrimination complaints.**

Implementation of concluding observations

We note with disappointment that Australia has not taken steps towards progressing many of the Committee's 2010 Concluding Observations. Australia has lodged its state report very late, delaying the reporting timetable again.

## ARTICLE 7: PUBLIC PARTICIPATION OF WOMEN (LOIPR 13)

Participation in politics and the judiciary

Across all levels of State and Federal government and in other areas of public life, women continue to be underrepresented in leadership and decision-making roles.

| Federal Government (September 2017) | State/Territory Governments (September 2017) |
|---|---|
| 29% of Federal parliamentarians in the House of Representatives were women. This is an increase of 2% since January 2016.[10] | 33% of State/Territory parliamentarians were women. This proportion has not shown much improvement since 2007.[11] |
| Women made up 33% of the Senate, which is the lowest proportion that has been recorded in the last decade.[12] | 35% of State/Territory government ministers were women. This is a 7% increase since 2007.[13] |
| 23% of Federal government cabinet ministers were women.[14] | |

Women remain underrepresented as both Commonwealth and State judges. In 2017, only 24% of Federal Court Judges were women.[15] On a State level, there were 131 male Justices and 42 female Justices across all Supreme Court and Court of Appeal jurisdictions.[16]

Barriers to public participation are exacerbated for women with disability, culturally and linguistically diverse (**CALD**) women, LGBTI women and Aboriginal and Torres Strait Islander women.

**Australia should:**

- **Develop a reliable evidence base about the experiences of women who are underrepresented in leadership and decision-making to inform programs and policies.**
- **Implement gender quotas to increase the number of women in parliament.**
- **Implement quotas for women's participation on government boards and committees for all publicly-funded bodies, and for the appointment of Justices on State and Commonwealth courts.**

Participation of Aboriginal and Torres Strait Islander Women

Aboriginal and Torres Strait Islander women continue to be underrepresented in public life. All governments must engage in genuine consultation with Aboriginal and Torres Strait Islander women when developing policies and laws that affect them and their communities. In 2010, the National Congress of Australia's First Peoples (**Congress**) was established as a national representative body for Aboriginal and Torres Strait Islander peoples. However, the Government is not adequately supporting and resourcing Congress.[17]

Aboriginal and Torres Strait Islander people have provided a roadmap for engagement with government in the Statement from the Heart (**the Statement**).[18] The Redfern Statement and Change the Record Blueprint are other key documents that outline the solutions posed by Aboriginal and Torres Strait Islander communities.[19]

The Statement calls for recognition of Aboriginal and Torres Strait Islander peoples in a constitutionally-enshrined voice to parliament and seeks the establishment of a Truth and Justice Commission to negotiate an agreement with government that addresses the inherent power disparity and entrenched disadvantage of Aboriginal and Torres Strait Islander peoples. These steps would ensure greater participation of Aboriginal and Torres Strait Islander women in public life.

The Referendum Council has recommended that the Australian Government hold a referendum to establish an Aboriginal and Torres Strait Islander voice to parliament.[20] Disappointingly, the Australian Government has rejected the Statement and the Referendum Council's recommendations.

**Australia should:**

- **Provide ongoing and sufficient funding for the National Congress of Australia's First Peoples in a way that acknowledges and respects decision-making by Aboriginal and Torres Strait Islander peoples.**

- **Undertake concrete steps to implement the Final Report of the Referendum Council, including by:**

    - **Conducting a constitutional referendum to include an elected Aboriginal and Torres Strait Islander body in the Constitution, to provide a direct voice to Parliament on matters significantly impacting Aboriginal and Torres Strait Islander peoples.**

    - **Establishing a Truth and Justice Commission to negotiate a Treaty, incorporating and facilitating a process for Truth Telling.**

    - **Undertaking further community-led consultations with Aboriginal and Torres Strait Islander communities on the structure and function of the representative body.**

<u>Capacity of NGOs to engage in advocacy</u>

The federal funding agreement for community legal centres continues to restrict the use of Commonwealth funding for law reform, policy or advocacy work.[21] This extends to all government advocacy and any engagement in public campaigns, subject to very narrow exceptions.[22] In 2017, the Government introduced a bill[23] that would have the effect of stifling important advocacy by civil society.[24]

**Australia should:**

- **Provide adequate funding for NGOs to undertake systemic law reform and advocacy work.**

- **Remove the restriction in the federal funding agreements for community legal centres and other organisations which prevent the use of Commonwealth funding for engagement in law reform, policy and advocacy work.**

- **Amend the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 to remove limitations on the ability of charities and NGOs to engage in advocacy.**

## ARTICLES 11 AND 13: EMPLOYMENT, ECONOMIC AND SOCIAL RIGHTS (LOIPR 16)

Gender wage and superannuation gap

Australia's gendered wage gaps continue to pose significant barriers to gender equality. Australia has a national gender pay gap of 15.3% with women earning $253.70 less per week than men.[25]

Superannuation is key to the economic security of women in retirement in Australia. On average, women currently retire with $90,000 less than men. By 2030 the retirement income gap is still expected to be 39%.[26] Women, particularly single women, are thus at greater risk of experiencing poverty in retirement.

Women continue to do the bulk of unpaid care and domestic work, with 32.6% of women reporting doing 15 or more hours of unpaid domestic work per week as compared to 11.7% of men.[27]

**Australia should:**

- **Address the gender wage gap, including by collecting a range of gender disaggregated data about the needs of diverse groups of women and improving workplace gender equality reporting.**

Workforce participation rates

Aboriginal and Torres Strait Islander women, women with disability, older women, CALD women and rural, regional and remote (**RRR**) women experience significant discrimination in employment.

| Group | Workforce participation rate |
|---|---|
| All women | 59.2%[28] |
| Aboriginal and Torres Strait Islander women | 52%, compared to 65% of Aboriginal and Torres Strait Islander men.[29] |
| CALD women | 47.3%, compared to 69.5% of CALD men.[30] |
| Women with disability | 53.4%, compared to 56.6% for men with a disability.[31] |
| Older women | 58.8%, compared to 71.9% of men.[32] |
| RRR women | 56.5%, compared to 66.8% of men.[33] |

**Australia should:**

- **Urgently implement the recommendations of the Australian Human Rights Commission's *Willing to Work* inquiry report.**
- **Develop comprehensive National Employment Frameworks for women with disability, Aboriginal and Torres Strait Islander women, CALD women, RRR women and older women. The frameworks should include targets, performance indicators and timeframes for increasing workforce participation of these groups.**

Parental leave and discrimination

Women in Australia experience high levels of discrimination by employers when pregnant or returning to work after parental leave. 49% of women report discriminatory acts by employers due to pregnancy or family responsibilities.[34] One in five mothers reported being made redundant or dismissed because of their pregnancy, request for parental leave or family responsibilities.[35]

Under Australia's minimum National Employment Standards (**NES**),[36] all employees with 12 months continuous service are entitled to 12 months unpaid parental leave.[37] Where mothers do not have 12 months service, their employment is often terminated.

Paid parental leave is essential to address the gendered wealth gap. The current Federal paid parental leave scheme provides employees with an entitlement to 18 weeks of leave funded by the Government at the minimum wage. Strict eligibility requirements mean that many mothers in the workforce do not meet the work test, and thus cannot access the scheme.

**Australia should:**

- **Amend the National Employment Standard to extend the entitlement of 12 months unpaid parental leave to all employees.**

- **Amend the *Sex Discrimination Act 1986* (Cth) to include indirect discrimination on the grounds of 'family responsibilities' and a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.**

- **Improve the paid parental leave scheme to provide 26 weeks of Government-funded paid leave at the national minimum wage plus superannuation; and remove the work test to allow all mothers who are employed prior to giving birth or adopting a child to access the scheme.**

Flexible work arrangements

While the NES include a right for parents to request flexible work arrangements, there is no enforcement mechanism.[38]

**Australia should:**

- **Amend the *Fair Work Act 2009* (Cth) to:**

    - **Place a positive duty on employers to implement flexible working conditions and make reasonable adjustments for employees; and**

    - **Introduce an enforceable right for employees to request flexible work arrangements and challenge a denial of such a request in the Fair Work Commission.**

Domestic and family violence paid leave

***Case Study - Meanu[39]***

*Meanu experienced domestic violence over many years by her husband. Meanu's husband made her give him her pay cheque each fortnight. When Meanu left her husband to escape the violence, she had no money to pay rent and buy furniture for a new apartment. After she arranged to get her mail forwarded she started receiving lots of overdue notices for bills she thought her husband had paid. Meanu now realises that she is in thousands of dollars of debt. Meanu needs to take time off work to attend Court but if she takes a day off she will not get paid. Right now, she really needs the money.*

Domestic/family violence impacts on women's ability to remain in the workforce.[40] The Fair Work Commission recently ruled that workers covered by Awards will have access to five days of unpaid domestic violence leave per year.[41] Providing paid domestic/family violence leave recognises that women experiencing domestic/family violence are often in a position of financial hardship and need to remain in the workforce in order to leave a violent relationship. Paid leave would enable women to maintain their income at a time when they have additional expenses such as new housing, furniture, vehicles, attending court, and professional support such as counselling and legal services.

**Australia should:**

- **Amend the National Employment Standards to provide for 10 days paid domestic/family violence leave per annum.**

Sexual harassment

While Federal, State, and Territory laws prohibit sexual harassment in areas including employment, education and accommodation, sexual harassment remains endemic in Australia. A 2018 survey found that over 48% of women polled had experienced sexual harassment in the workplace.[42] Only 1 in 5 women make a formal report or complaint after experiencing sexual harassment,[43] and many women are dismissed or demoted upon reporting. Sexual harassment can be a barrier to women participating fully in paid work.

**Australia should:**

- **Amend the *Sex Discrimination Act 1984* (Cth) to:**
    - **Introduce a general prohibition against sexual harassment in any area of public life; and**
    - **Impose a positive obligation on employers to take all reasonable steps to avoid sexual harassment in their workplace.**

Social security

The Government has made numerous amendments to social security programs which will overwhelmingly affect women.

In 2013, the Government enacted laws that reduce single mothers' access to social security.[44] Single parents on the main unemployment payment were $80 - $140 per week worse off.[45] Several measures require parents to participate in 'mutual obligation activities' to receive income support payments. These 'mutual obligation activity' measures will be expanded by a new program from July 2018. If a parent fails to participate in an activity, their payment may be suspended. It is expected that 96% of program participants will be women.[46]

In 2018, the Government introduced intrusive measures that require single parents receiving parenting or unemployment payments to provide a legally binding confirmation from a third party that they are not in a relationship.[47] This measure predominantly impacts single mothers, and women escaping domestic violence who may lose their entitlement.[48]

The Social Services Legislation Amendment (Encouraging Self-Sufficiency for Newly Arrived Migrants) Bill 2018 increases the waiting period for new migrants before they can access social security payments from two to three years for most payments, with a further extension to four years proposed. Family Tax Benefit was previously exempt from the waiting period in recognition of the need to provide support to families with children. As women with children are the primary beneficiaries of family tax benefit and paid parental leave, they will be overwhelmingly affected if the Bill passes.[49]

In the 2018-19 budget, the Government proposed several punitive measures, including reducing the timeframe that a person's Disability Support Pension can be suspended while they are in prison from two years to 13 weeks; diverting income support payments to State and Territory Governments for unpaid fines; and suspending payments for people with outstanding warrants.[50] These changes will have a severe impact on criminalised women.[51]

**Australia should:**

- **Repeal amendments to social security legislation and policy that leave women worse off.**

- **Increase support services such as child care to enable women to find suitable work.**

Status Resolution Support Services (SRSS)

The Government is severely restricting the eligibility criteria for accessing the income support program for asylum seekers living in Australia from June 2018. The SRSS program provides asylum seekers awaiting determination of their refugee application with financial support for basic living costs, access to casework support and counselling.[52] Support services have reported the cuts are leading to homelessness, depression, anxiety and self-harm.[53]

**Australia should:**

- **Make its social security framework accessible to all people living in Australia regardless of their visa status.**

- **In the interim, reinstate the Status Resolution Support Services program in full.**

**ARTICLE 12: HEALTHCARE (LOIPRs 17-19, 22)**

Access to reproductive healthcare

Accessing or providing abortion services is criminalised in many Australian states and territories.[54] Patients face anti-abortion protesters who harass and obstruct them as they attempt to access reproductive healthcare. There is no provision of safe access zones in Queensland, South Australia or Western Australia.[55] Due to the lack of public funding for abortion services, many pregnant women cannot afford abortions or have to travel long distances.[56] Access to abortions is also threatened by moves in some states to expand legal personhood to include foetuses.[57] Domestic violence undermines autonomy in reproductive healthcare and there is little recognition of the impact of reproductive coercion.[58]

**Australia should:**

- **Ensure that women have access to safe, affordable abortion services free from harassment.**

National Disability Insurance Scheme (NDIS)

Australia's funding of long-term disability support was reformed in July 2013 with the launch of the NDIS. The roll out of the NDIS has exposed gaps in the provision of disability support services and health care systems. Not all people with disability can access the NDIS, and support services report that people are experiencing stress, delay and disadvantage due to rollout issues.[59] Women with psychosocial disability have difficulty accessing the NDIS. The NDIS is designed to cover approximately 64,000 people with psychosocial disability. It is not designed to cover the estimated 690,000 Australians who live with severe mental health problems.[60] Mental health support services are reducing their services due to mental health funding being transferred to the NDIS, creating a funding shortfall.[61] The NDIS eligibility criteria requires applicants to prove their disability is permanent, while people with mental health problems are generally treated with the goal of recovery.[62]

**Australia should:**

- **Ensure the NDIS is sufficiently funded to cover the needs of people with psychosocial disability, and that NDIS access and planning pathways are designed with the involvement of people with disability.**

- **Ensure sufficient funding for mental health support services.**

- **Ensure that health care and other government services are provided in ways that meet the needs of people with disability.**

Forced sterilisation and medical interventions

A 2013 parliamentary inquiry found that women with disability and people with intersex variations are subjected to involuntary and coerced sterilisation.[63] Women and girls with disability continue to be subject to forced sterilisation procedures.[64]Australia has not legislated against forced medical intervention on the bodies of people with intersex

variations. These medical practices persist on the basis of inadequate medical evidence and without independent oversight. [65]

**Australia should:**

- **Enact national uniform legislation prohibiting:**
    - **Forced sterilisation of women and girls with disability; and**
    - **Non-medically necessary sterilisation, including surgical and hormonal interventions on people with intersex variations without personal consent.**

LGBTI people's health

The general health of LGBTI people is lower than the national average. LGBTI people have poorer mental health outcomes than the general population. This is evidenced by rates of suicide attempts, which are five times higher for LGBTI young people aged 16 to 27, six times higher for people over 16 with an intersex variation and eleven times higher for transgender adults.[66]

**Australia should:**

- **Ensure non-discriminatory access to health and mental health services for LGBTI people, including targeted health promotion and suicide prevention initiatives in collaboration with LGBTI specific service providers and community organisations.**

Women in RRR areas access to healthcare

Women particularly in RRR areas in Australia face many barriers to accessing healthcare due to limited availability and accessibility of general and specialist services.[67]

**Australia should:**

- **Provide additional funding to general and specialist healthcare services in RRR areas.**

Aboriginal and Torres Strait Islander women

The life expectancy gap of Aboriginal and Torres Strait Islander women is 9.5 years.[68] Closing the Gap in health equality between Aboriginal and Torres Strait Islander people and non-Indigenous Australians is an agreed national priority, but to date has been backed by little meaningful action.

**Australia should:**

- **Implement the health reforms outlined in the Redfern Statement.**[69]

Women seeking asylum

Australia maintains its harmful policies of mandatory immigration detention and offshore processing.[70] There is no time limit on onshore or offshore detention and there is no independent review of detention.

Mental health problems are serious and persistent for women and girls in offshore processing centres[71] and onshore facilities. There have been numerous reported incidents of sexual harassment, sexual assault and self-harm in the offshore processing centre on Nauru.[72]

A 2017 Parliamentary inquiry found there is an 'indisputable' connection between unsafe living conditions in the offshore processing centres and widespread mental health problems and self-harm.[73] UNHCR has called for the removal of asylum seekers from offshore detention centres to locations where they can receive adequate support and services.[74]

The health facilities and the level of medical treatment available in both Nauru and Manus Island are inadequate for anything beyond simple medical procedures.[75] Women refugees on Nauru are unable to access reproductive healthcare including abortions, which are illegal in Nauru. The UNCRC has raised concerns about the medical care available to mothers and young children on Nauru.[76]

Despite effectively controlling the treatment of refugees on Nauru and Manus Island, Australia resists requests for transfer for healthcare.[77] Women seeking to terminate pregnancies have been sent to third countries and denied transfer to Australia for medical procedures.[78]

**Australia should:**

- **Urgently close the offshore processing centres and bring refugees and asylum seekers to Australia.**

- **In the interim, improve the quality of and access to appropriate medical facilities in offshore processing centres.**

- **Improve procedures for the transfer to Australia of asylum seekers and refugees in need of medical treatment.**

- **End the policy of mandatory detention and impose time limits and periodic review on immigration detention.**

**ARTICLE 16: MARRIAGE (LOIPR 9)**

Marriage equality

We welcome the legalisation of marriage equality in December 2017.

Forced marriage

Forced marriage (**FM**) was criminalised in Australia in 2013.[79] In 2016-2017, the Australian Federal Police (**AFP**) received 70 referrals of forced marriage.[80] To date there have been no prosecutions.

FM often involves Australian residents or citizens under the age of 18 being forced into a marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often, relatives are alleged to have organised a marriage without free and full consent.[81] FM disproportionately impacts women and girls.

We welcome the Government's recent announcement of a 12-month pilot program to 'enable victims of forced marriages to access up to 200 days of support…without being required to contribute to a criminal investigation or prosecution.'[82]

This approach still requires individuals at risk of FM or who have experienced FM to report to the AFP to access a government funded support program. There has been no corresponding change made to the human trafficking visa framework under the pilot program. The grant of these bridging visas requires the support of the AFP and the extension of the visa is contingent on assistance in the criminal justice process. Anecdotal evidence indicates that many women don't engage with law enforcement for fear that family members will face a criminal prosecution and as a result cannot access support.

**Australia should:**

- **De-link support from engagement with law enforcement and the criminal justice process. Referrals to the support program should be permitted by civil society organisations.**
- **Introduce Forced Marriage Protection Orders as an alternative to the Criminal Justice framework.**
- **Fund services and communities to identify and respond to individuals at risk of forced marriage, including providing appropriate accommodation options.**
- **Expand the definition of gender-based violence, family violence and child protection to include forced marriage.[83]**
- **Include forced marriage in national family violence action plans, including education programs related to family violence in schools.**

- **Fund an Information Development Framework for data relating to forced marriage to identify gaps and determine priority information needs in order to establish the true nature and prevalence of forced marriage and support targeted interventions.**

**WOMEN IN DETENTION (LOIPR 20)**

Parental imprisonment

Case study - Jessica[84]

*Jessica is a young woman with three children. Jessica has a history of severe depression and learning difficulties and was a carer for her partner who also suffers from mental illness. Jessica was charged with and convicted of dangerous driving occasioning grievous bodily harm. It was her first offence. She received a 2-year sentence of imprisonment. Her partner who needs care is now the sole carer of their children and the family is experiencing financial hardship.*

Female incarceration has increased rapidly over the past decade, with most women in prison being mothers,[85] and many the heads of single parent households.[86] Children of incarcerated mothers are at increased risk of entering child protection or justice systems.[87]

An estimated 80% of Aboriginal and Torres Strait Islander women in prison are mothers.[88] As many Aboriginal and Torres Strait Islander women care for their own children and those of their extended families, imprisonment has significant implications for parenting, income, child care and role modelling.[89]

**Australia should:**

- **Only imprison women, particularly pregnant women and women with dependent children as a last resort.**

- **Amend bail and sentencing considerations to include consideration of the impact of imprisonment on dependent children, the best interests of the child and recognise the family as the fundamental unit in line with established international human rights principles.**

Over-imprisonment of Aboriginal and Torres Strait Islander women

Aboriginal and Torres Strait Islander female offenders are the fastest growing prison cohort in Australia, representing 34% of all incarcerated women, despite representing only 2.6% of the adult female population.[90] This is exacerbated by laws that disproportionately criminalise Aboriginal and Torres Strait Islander women, including punitive sentencing for low level offending such as failure to pay fines, public drunkenness and mandatory sentencing attached to low level offences.[91]

**Australia should:**

- **Review and reform laws that disproportionately criminalise Aboriginal and Torres Strait Islander women, including mandatory sentencing, laws containing minor offences that can be dealt with in non-punitive ways and abolish imprisonment for fine default.**

- **Invest in community-led early support programs and services to address the underlying factors driving people into the justice system.**

- **Urgently implement the recommendations of the Australian Law Reform Commission's Pathways to Justice Report, Redfern Statement and Change the Record Blueprint.[92]**

Diversionary programs

There is a significant overlap between mental health issues and substance abuse among women in prison, with most women who are substance dependent also reporting a mental illness.[93] These factors can lead to ongoing criminalisation and contact with the justice system if proper supports are not available.[94]

Diversion programs which provide culturally appropriate services and address trauma are integral to reducing over-imprisonment rates. Unfortunately, diversion programs are unavailable in many jurisdictions and non-metropolitan areas in Australia.

**Australia should:**

- **Provide increased funding for culturally-appropriate diversionary and rehabilitation programs in all states and territories, including in RRR areas.**

Women with disability

Laws in Western Australia, Northern Territory, Queensland and Tasmania operate in ways that result in indefinite detention of people with cognitive disability.[95] Women with cognitive and psychosocial disability are over-represented in the criminal justice system, especially Aboriginal and Torres Strait Islander women.[96] People with cognitive disability are more likely to be charged and more likely to be imprisoned.[97] Those with cognitive and psychosocial disability spend longer in custody, are less likely to be granted parole and have limited access to diversionary programs.[98]

**Australia should:**

- **Repeal laws that result in indefinite detention of persons with disability.**

- **Ensure funding for implementation of community-led strategies for holistic, integrated support of people with disability in contact with the criminal justice system.**

Women in immigration detention

See Women seeking asylum on page 16.

**ACCESS TO JUSTICE (LOIPR 4)**

Women are more likely to experience unmet legal need than men. Those with unmet legal need are more likely to be Aboriginal and Torres Strait Islander, have a disability, be unemployed, and be from a non-English speaking background. Unmet legal need is particularly concentrated in rural, regional and remote areas. [99] In 2014, the Government removed free legal assistance to the majority of people seeking asylum who arrived by boat or plane without visas.

We welcomed the reversal of the 30% Commonwealth funding cut to community legal centres that was due to take effect on 1 July 2017.[100] However, a need for ongoing, predictable and increased funding for legal assistance services, including: community legal centres, specialist Women's Legal Services, disability advocacy organisations, community controlled Aboriginal and Torres Strait Islander legal services, Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services remains, in order to meet legal need.

**Australia should:**

- **Increase funding for:**
    - **community legal centres, including specialist Women's Legal Services;**
    - **disability advocacy organisations; and**
    - **community controlled Aboriginal and Torres Strait Islander legal services, including Family Violence Prevention Legal Services and Aboriginal and Torres Strait Islander Legal Services.**
- **Ensure asylum seekers have access to free legal assistance.**
- **Implement the 2014 recommendation of the Productivity Commission to immediately invest $200 million annually in legal assistance services to address unmet need for civil law services.**

**VIOLENCE AGAINST WOMEN (LOIPRs 10, 11, 18, 21)**

Violence against women is endemic in Australia, with 1 in 3 women experiencing physical violence and almost 1 in 5 women experiencing sexual violence.[101] Domestic and family violence comes in many forms, including physical, sexual violence, psychological, social, economic abuse, and stalking, including technologically-facilitated stalking and abuse.

Aboriginal and Torres Strait Islander women

Aboriginal and Torres Strait Islander women are:

- 45 times more likely to experience family violence than non-Aboriginal women.[102]
- 34 times more likely to be hospitalised due to this violence; and
- 3.7 times more likely to be victims of sexual violence.[103]

The prevalence of violence against Aboriginal and Torres Strait Islander women emanates from colonisation, and the dispossession and discrimination that First Nations peoples have been subjected to for more than two centuries.[104]

Over 75 per cent of Aboriginal women in prison had been sexually assaulted as a child, just under 50 per cent had been sexually assaulted as adults and almost 80 per cent were victims of family violence.[105]

**Australia should:**

- **Ensure data, policy and programs addressing violence against women include a specific focus on Aboriginal and Torres Strait Islander women. These policies and programs should be developed by, or in extensive consultation with Aboriginal and Torres Strait Islander women.**

- **Allocate increased funding for legal assistance and support services for Aboriginal and Torres Strait Islander women.**

Women and girls with disability

Case study - Peta[106]

*Peta has a cognitive disability and lives in supported accommodation. She was raped by a support worker. The police were notified, and although believing Peta's evidence, they felt that they wouldn't be able to obtain a conviction against the support worker because Peta's testimony would be deemed unreliable by the court. Consequently, the police didn't pursue the investigation. The support worker is still employed by the same organisation, but at a different facility.*

Women and girls with disability experience greater risk of violence, particularly sexual violence.[107] Women with disability are 40% more likely to experience domestic violence than women without a disability.[108] Reports indicate that 25% of rape cases are perpetrated against women with disability,[109] and up to 90% of women with an intellectual disability

have been subjected to sexual abuse.[110] Women with disability also face greater barriers in accessing justice.[111]

**Australia should:**

- **Ensure data, policy and programs addressing violence against women include a specific focus on women with disability.**

- **Include measures to address all forms of violence in all settings experienced by women and girls with disability in the National Disability Strategy.**

- **Allocate increased funding for legal assistance and support services for women with disability.**

- **Require police, judicial and legal officers to undertake annual training on appropriate interviewing of witnesses and defendants with cognitive disability to increase access to justice.**

Women from a culturally and linguistically diverse background (CALD women)

CALD women experience higher levels of violence than the general population.[112] CALD women are more likely to experience abuse by extended family members, abuse related to their immigration status, dowry demands and forced marriage.[113] The family violence provisions in the *Migration Regulations* only protect some women from deportation if they leave a violent relationship.[114] Women on certain temporary visas, including temporary work visas, business or student visas cannot access the family violence provisions and are thus subject to deportation if they leave a violent relationship. It is estimated that without intervention, the cost of violence perpetrated against immigrant and refugee women will reach $4 billion in 2021-22.[115]

CALD women experience barriers when seeking help, such as a lack of support networks, socio-economic disadvantage, community pressure, and lack of knowledge about their rights.[116]

**Australia should:**

- **Expand the family violence provisions in the *Migration Regulations 1994* (Cth) to protection visa applicants and other visa applicants to enable CALD women to leave a violent relationship without concerns about deportation.**

Older women

Older women may have experienced violence across their life course, be experiencing poly-victimisation,[117] be care-dependent[118] or depended on for care, and unable to protect themselves from harm. [119]

Victims of elder abuse are predominantly women.[120] Types of elder abuse include financial, psychological, physical, social and sexual violence.[121] It is estimated that between 2-10% of

older Australians experience elder abuse.[122] Elder abuse is a risk factor for homelessness. Australia lacks appropriate legislative and other measures to prevent violence, abuse and neglect of older women. This includes in private and public settings. Australia also lacks appropriate and adapted support services[123] and effective systems of remedies and redress.[124]

**Australia should:**

- **Enact uniform national laws protecting older women from abuse, neglect and exploitation.**

- **Ensure data, policy and programs addressing violence against women include a specific focus on older women.**

- **Allocate funding for improved long-term housing options for older women.**

Rural, Regional and Remote (RRR) women

Women living in RRR areas are at a higher risk of experiencing domestic violence.[125] A local study has shown that 73 per cent of clients experienced family violence.[126] There are numerous barriers to obtaining access to justice, including a lack of appropriate and accessible support services, safe transportation, security and access to mediation services. Women experiencing family violence are also disadvantaged by a lack of local access to specialist Magistrates Courts including the Family Violence Division,[127] placing women's safety at risk in regional areas where the complexities of family violence are not dealt with appropriately by the court.[128]

**Australia should:**

- **Ensure data, policy and programs addressing violence against women include a specific focus on RRR women.**

- **Allocate increased funding for legal assistance, specialist courts and support services in RRR areas.**

National Plan to reduce violence against women and their children

Despite the adoption in 2016 of a Third Action Plan under the National Plan, there is no evidence of a decrease in violence against women,[129] and key actions under the plan remain unimplemented. There is widespread concern that the plan is under-resourced and not sufficiently focused on prevention. The National Plan does not address the experiences of women in immigration detention and women in custody and there is little attention given to the links between women experiencing family violence and sexual assault, and over-imprisonment.

Further, diverse groups of women that experience violence at higher rates (see above) are marginalised from policy development relating to gender-based violence.

**Australia should:**

- **Establish an independent mechanism to evaluate the implementation of the National Plan and provide adequate resourcing to NGOs, including legal assistance services and specialist domestic, family and sexual violence services, ensuring that its funding processes support specialist women's services and Aboriginal and Torres Strait Islander community-controlled services with expertise in working with victims/survivors.**

- **Implement processes for meaningful participation and collaboration with women experiencing intersecting discrimination, particularly Aboriginal and Torres Strait Islander women, women with disability and CALD women, in the development, implementation and monitoring of action plans.**

Family law system

The current family law system in Australia is inadequate, failing to ensure the safety of women and their children fleeing domestic and family violence.[130] The *Family Law Act 1975* needs to be amended to better protect the safety of women and children by removing a presumption of "equal shared parental responsibility" and language of "equal shared time" to shift culture and practice towards a greater focus on safety and risk to children. There needs to be a greater focus on early identification of domestic and family violence and early and ongoing risk assessment through specialist domestic violence services based in the family courts and early decision-making, triaging and case management of domestic and family violence cases.[131] Entrenched barriers including victims-survivors being directly cross-examined by their alleged abuser and the complexity of the court process mean that vulnerable women have difficulty accessing the family law system.[132] Despite high levels of family violence Aboriginal and Torres Strait Islander women and CALD women are under-represented in the family law system.[133]

There is no systemic national response to the deaths of adults or children who have been involved with the family law system.[134]

**Australia should:**

- **Implement Women's Legal Services Australia's Safety First in Family Law plan.[135]**

- **Introduce a systemic response to the deaths of adults or children who have had involvement with the family law system. Australia should implement a national approach to family and domestic violence deaths to collate data at a state, territory and federal level; investigate system failure; make recommendations for immediate and long term systemic change; and mandate state, territory and federal agency responses to and public monitoring of review mechanisms.**

Victims support schemes

All states and territories in Australia have victims support schemes in place to provide financial and non-financial support to victims of violence.[136] The NSW victims support scheme fails to recognise the barriers victims of domestic and family violence experience in reporting violence, and the nature of harm experienced by these victims. Onerous evidence requirements, strict time limits, and limits on payments on multiple acts of violence by the same perpetrator mean that many women are unable to access the scheme and are only entitled to very small amounts of compensation (i.e. $1,500) under the scheme.[137]

**Australia should:**

- **Improve the NSW Victims Support scheme by implementing higher recognition payments for women who have experienced violence, removing time limits, and accepting wider forms of evidence for an act of violence or injury.**

**APPENDIX**

List of Contributors

- Community Legal Centres NSW
- Community Legal Centres NSW Rural, Regional and Remote Network
- Good Shepherd Australia New Zealand
- Kingsford Legal Centre
- National Association of Community Legal Centres
- National Congress of Australia's First Peoples
- National Social Security Rights Network
- People with Disability Australia
- Refugee Advice and Casework Service
- Sisters Inside Inc
- Townsville Community Legal Service Inc
- Western NSW Community Legal Centre Inc
- Women With Disabilities Australia
- Women's Legal Service NSW
- Women's Legal Services Australia

List of Endorsements (In whole or in part*)

- ActionAid Australia
- Anti-Slavery Australia
- Australian Lawyers for Human Rights
- Asylum Seeker Resource Centre
- Australian Council of Social Service
- Australian Pro Bono Centre*
- Canberra Community Law
- Children by Choice
- Community Legal Centres NSW
- Community Legal Centres Queensland
- Disabled People's Organisations Australia
- Elizabeth Evatt Community Legal Centre
- Far West Community Legal Centre
- Federation of Community Legal Centres (Victoria)
- Feminist Legal Clinic*
- Federation of Ethnic Communities' Councils of Australia
- Good Shepherd Australia New Zealand*
- Human Rights Council of Australia
- Inner City Legal Centre
- Job Watch Inc
- Kingsford Legal Centre
- LGBTIQ - Support & Protection Services Inc.
- National Association of Community Legal Centres
- National Congress of Australia's First Peoples
- National Family Violence Prevention Legal Services Forum
- National Social Security Rights Network

- Northern Suburbs Community Legal Centre Inc
- Peel Community Legal Services Inc
- People with Disability Australia
- Public Interest Advocacy Centre
- Welfare Rights Centre NSW
- Queensland Advocacy Incorporated
- Queenslanders with Disability Network Ltd*
- Redfern Legal Centre
- Refugee Advice and Casework Service
- Refugee and Immigration Legal Service
- Refugee Council of Australia
- Sisters Inside Inc
- Southern Community Justice Centre Inc
- SCALES Community Legal Centre
- St Vincent de Paul Society National Council
- Taylor Street Community Legal Service (Hervey Bay Neighbourhood Centre Inc)
- The Alpha Zulu Program
- The Deli Women and Children's Centre
- The Humanitarian Group*
- Townsville Community Legal Service Inc.
- UNSW Human Rights Clinic
- Warrina Domestic & Family Violence Specialist Services Co-operative Ltd
- Women With Disabilities Australia
- Women's Legal Service NSW*
- Women's Law Centre of WA
- Women's Legal Services Australia*

## ENDNOTES

[1] 87% of Australians support the introduction of a Human Rights Act. See National Human Rights Consultation Committee, *National Human Rights Consultation Report* (September 2009), xxiv.
[2] The funding cuts to the AHRC announced on 15 December 2014 amounted to $5 million over three years, or more than $1.6 million per year: see Commonwealth Government, 'Mid-Year Economic and Fiscal Outlook: Appendix A – Policy Decisions Taken since the 2014-2015 Budget: Expense Measures' (December 2014) 120. See also: Australian Human Rights Commission 'Corporate Plan 2016-17' (Report, July 2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/Corporate-Plan-2016-AHRC.pdf>, 5.
[3] Commonwealth Government, 'Budget 2018-19 - Budget Paper No. 2' (8 May 2018) 48, 75.
[4] See, e.g., Simon Leo Brown, 'Gillian Triggs says 'highly personal' attacks aimed at derailing Human Rights Commission', *ABC* (online), 24 July 2017 <http://www.abc.net.au/news/2017-07-24/gillian-triggs-says-human-rights-debate-derailed-by-attacks/8737548>; Amanda Meade, 'Academics and law bodies warn attack on Gillian Triggs threatens democracy', *The Guardian* (online) 16 February 2015 <https://www.theguardian.com/australia-news/2015/feb/15/academics-and-law-bodies-warn-attack-on-gillian-triggs-threatens-democracy>.
[5] Federal anti-discrimination laws include the *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 2004* (Cth). States and territories have also enacted anti-discrimination legislation.
[6] *Sex Discrimination Act 1984* (Cth) pt I.
[7] *Sex Discrimination Act 1984* (Cth) s 38.
[8] Complaints may be accepted after 6 months in some circumstances.
[9] *Human Rights Legislation Amendment Act 2017* (Cth), amending *Australian Human Rights Commission Act 1986* (Cth) ss 46PH(1)(b), 46PO.
[10] Inter-Parliamentary Union, *Women in National Parliaments - World Classification* (1 April 2018) <http://archive.ipu.org/wmn-e/classif.htm>.
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[12] Australian Bureau of Statistics, 'Gender Indicators, Australia' (Publication No 4125.0, September 2017) table 13.3.
[13] Australian Bureau of Statistics, 'Gender Indicators, Australia' (Publication No 4125.0, September 2017) table 13.4.
[14] Australian Bureau of Statistics, 'Gender Indicators, Australia' (Publication No 4125.0, September 2017) table 13.3.
[15] Australian Bureau of Statistics, 'Gender Indicators, Australia' (Publication No 4125.0, September 2017) table 13.3.
[16] Australian Bureau of Statistics, 'Gender Indicators, Australia' (Publication No 4125.0, September 2017) table 13.7.
[17] National Congress of Australia's First Peoples, 'Australia's Second Universal Periodic Review' (Submission, 2015) <http://nationalcongress.com.au/wp-content/uploads/2015/09/UPR-Australia-Congress-Shadow-Report-and-Factsheets-Final.pdf>. The Government has not made any allocations to Congress in its annual budgets since elected in 2013.
[18] Referendum Council, 'Statement from the Heart' (Statement, First Nations National Constitutional Convention, 26 May 2017) <https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart.PDF>.
[19] Aboriginal and Torres Strait Islander Peak Organisations, 'The Redfern Statement' (Statement, 9 June 2016) <https://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-_Final.pdf>; Change the Record Coalition, 'Blueprint for Change' (Report, 2015) <https://drive.google.com/file/d/0B3OlOcaEOuaFU3BNc3Zrbl9wa0U/view>.
[20] Referendum Council, 'Final Report of the Referendum Council' (Report, 30 June 2017) 2 <https://www.referendumcouncil.org.au/final-report>.
[21] Council of Australian Governments, 'National Partnership Agreement on Legal Assistance Services' (Intergovernmental Agreement, 2017)

<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/NationalPartnershipAgreementOnLegalServices.pdf> cl B7.

[22] There is a very limited exception for providing community legal education or 'where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice': ibid.

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[33] Australian Bureau of Statistics, 'Labour Force, Australia, Detailed' (Publication No 6291.0.55.001, February 2017).

[34] Australian Human Rights Commission, 'Supporting Working Parents: Pregnancy and Return to Work National Review' (Report, 2014) 1 <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/supporting-working-parents-pregnancy-and-return-work>.

[35] Ibid 8.

[36] The National Employment Standards are ten minimum entitlements that must be provided to all employees. Fair Work Ombudsman, 'National Employment Standards' <https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>.

[37] *Fair Work Act 2009* (Cth) s 67.

[38] *Fair Work Act 2009* (Cth) s 65.

[39] De-identified case study of a Kingsford Legal Centre client.

[40] Ludo McFerran, 'National Domestic Violence and the Workplace Survey' (Report, Australian Domestic and Family Violence Clearinghouse, October 2011); Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report No 117 (2012) <https://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws%E2%80%94improving-legal-frameworks-alrc-report-117/15-emp>.

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[48] Christopher Knaus, 'Welfare Crackdown on Relationships a 'double standard' Not Applied to MPs', T*he Guardian* (online), 4 April 2018. A further safety net for women escaping domestic violence has also been removed by the repeal of provisions which protected people entitled to social security payments but could not lodge a complete claim due to their circumstances - *Social Services Legislation Amendment (Welfare Reform) Act 2018* (Cth).

[49] Philip Alston, 'Mandate of the Special Rapporteur on extreme poverty and human rights' (Correspondence, 30 January 2018) <http://ohchr.org/documents/issues/poverty/ol-aus-1-2018.pdf>. See also Amy Remeikis, 'Melbourne woman complains to UN, saying parenting cuts are human rights abuse', *The Guardian* (online), 20 September 2017 <https://www.theguardian.com/world/2017/sep/21/un-complaint-parenting-payment-melbourne-cuts-human-rights-abuse>.

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[51] Increasing numbers of women receive the DSP and high rates of women in prison have disabilities. However, there is no data about the number of criminalised women (or men) who may be affected by changes to DSP eligibility. Aboriginal women in particular are likely to be in prison for unpaid fines. Based on information provided by Queensland Corrective Services to Sisters Inside, failure to appear in court (which leads to the issue of an arrest warrant) has consistently been in the top 10 most common offences of women in prison in Queensland: see generally Department of Social Services, *DSS Payment Demographic Data* (April 2016) <https://data.gov.au/dataset/dss-payment-demographic-data>.

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[53] Ben Doherty, '"New dose of cruelty": up to 7,000 asylum seekers to lose income support', *The Guardian* (online), 30 March 2018 <https://www.theguardian.com/australia-news/2018/mar/30/new-dose-of-cruelty-up-to-7000-asylum-seekers-to-lose-income-support>.

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[57] See, eg, Crimes Amendment (Zoe's Law) Bill 2013 (No 2) (NSW).

[58] Children By Choice, *Recognising Violence and Coercion* (2 March 2018) <https://www.childrenbychoice.org.au/forprofessionals/recognisingviolenceandcoercion>.

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[62] *National Disability Insurance Scheme Act 2013* (Cth) s 24(b).
[63] Senate Community Affairs References Committee, Parliament of Australia, *Involuntary or Coerced Sterilisation of Intersex People in Australia* (2013); Senate Community Affairs References Committee, Parliament of Australia, *Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (2013).
[64] Senate Community Affairs References Committee, Parliament of Australia, *Involuntary or Coerced Sterilisation of People with Disabilities in Australia* (2013) 15.
[65] *Re Carla (Medical procedure)* [2016] FamCA 7. See also: Morgan Carpenter, *The Family Court Case Re: Carla (Medical procedure) [2016] FamCA 7* (8 December 2016) Intersex Human Rights Australia <https://ihra.org.au/31036/re-carla-family-court/>.
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[68] See, e.g., Australian Bureau of Statistics, Life Tables for Aboriginal and Torres Strait Islander Australians, 2010-2012, (Publication No 3302.0.55.003, November 2013).
[69] The Redfern Statement, released in June 2016, is a call to action for Government by peak Aboriginal and Torres Strait Islander community organisations in Australia. The Redfern Statement calls for: the recognition of health equality as a national priority; the restoration of funding for Aboriginal health services; for Aboriginal Community Controlled Services to become the preferred providers for health services for Aboriginal and Torres Strait Islander people; and for the Federal Government to prioritise the development of a national health strategy that takes a broader holistic look at the elements to health and wellbeing for Australia's First Peoples. Aboriginal and Torres Strait Islander Peak Organisations, 'The Redfern Statement' (Statement, 9 June 2016) <https://nationalcongress.com.au/wp-content/uploads/2017/02/The-Redfern-Statement-9-June-_Final.pdf>.
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and asylum seekers, along with medical records and audio recordings of medical appointments. See also a list of case studies of substandard healthcare in the Legal and Constitutional Affairs References Committee, above n 67, 26 – 35.

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