



Australian
Human Rights
Commission

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

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE
UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN**

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1 Introduction

1. This submission is made by the Australian Human Rights Commission, an ‘A status’ national human rights institution.
2. The Commission operates under the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) and includes promoting compliance with the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW).
3. The *Sex Discrimination Act 1984* (Cth) (SDA) gives effect to Australia’s international human rights commitments, including CEDAW, and includes as an objective the promotion of equality between men and women. The SDA protects people from discrimination on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy and breastfeeding. It also protects workers with family responsibilities and makes sexual harassment against the law.
4. The Commission has the power under the AHRC Act to investigate and conciliate complaints made under the SDA by people who experience direct or indirect discrimination.¹
5. The Commission welcomes the opportunity to provide a written contribution ahead of consideration of Australia’s 8th periodic report under CEDAW² and looks forward to engaging with the Committee.
6. The Commission’s proposed recommendations are contained in the body of this submission and at **Attachment 1**.

2 Priority areas

7. The matters addressed in this submission are all of importance to Australia’s compliance with CEDAW. However, the Commission wishes to draw the Committee’s attention to three areas of particular importance:
 - a. The need to accelerate action to address the key issues facing Aboriginal and Torres Strait Islander women and children, including targeted prevention and early intervention initiatives to reduce violence against Indigenous women and children (section 4.1, Recommendation 3(ii)); the high rates of contact with the child protection system (section 10, Recommendation 15); and the high rates of Indigenous women in the justice system (section 10, Recommendation 15).
 - b. The need to ensure adequate measures for the prevention of and response to sexual harassment in the workplace, with consideration of the identified strategies in the Commission’s 2012 survey report and the forthcoming outcomes of the 2018 survey, as discussed in section 4.2 (see Recommendation 4).
 - c. The need to address existing barriers to women’s equal participation in the workforce and the gender gap in retirement savings, as discussed in section 5 (see Recommendation 9).

8. **The Commission recommends that the Committee request an update from the Australian Government on progress in relation to the above priority areas in 12 months, under article 18 of CEDAW and Rule 48 of the Rules of Procedure.**

3 Human Rights Framework

3.1 Scrutiny of human rights and the Parliamentary Joint Committee on Human Rights (CO 17, CEDAW article 2, LOI 1)

9. The Commission commends the Australian Government for establishing the Parliamentary Joint Committee on Human Rights (PJCHR) in 2011.³
10. The Commission is concerned that the PJCHR's views and concerns do not always appear to be given sufficient consideration during the legislative process, and that it is possible for a bill to pass into law prior to the PJCHR releasing its conclusions in relation to the human rights compatibility of the bill.⁴ There is also variable quality in the drafting of statements of compatibility within and across Government departments.⁵
11. The Commission notes that some other parliamentary committees also scrutinise legislation and consider compliance with human rights.⁶

Recommendation 1: That the Australian Government ensure that:

- (i) **Concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.**
- (ii) **All statements of compatibility are consistently of a high standard and are supported by evidence and analysis.**

3.2 Domestic incorporation (CO 15–17, 20–21, CEDAW Article 2, LOI 1)

12. The Commission welcomes the commitment of the Government to remove the reservation to CEDAW on women in defence combat roles,⁷ and encourages the Government to consider removing its reservation to article 11(2) on maternity leave with pay.
13. The operation of the SDA over the last 25 years shows that there are some limitations with the current form and content of Australia's gender equality legislation.⁸
14. The scrutiny provided for by the PJCHR is not a substitute for full incorporation of CEDAW into domestic law through mechanisms such as a national human rights Act.⁹ More recently, the Special Rapporteur on Violence against Women has recommended that Australia fully incorporate and implement CEDAW.¹⁰
15. The Commission has made recommendations to improve the effectiveness of the SDA to ensure equality of women and men, and to ensure the Australian Government fully implements Australia's international legal obligations under CEDAW.¹¹

Recommendation 2: That the Australian Government:

- (i) Fully incorporate CEDAW into Australian law.**
- (ii) Amend the *Sex Discrimination Act 1984* to improve its effectiveness, consistent with the Commission's recommendations to Australia's Second Universal Periodic Review.¹²**

4 Violence against women and girls and their health and wellbeing (CO 28–29, 40–43, CEDAW articles 1–5, 12 and 16, LOI 10–11, 21)

4.1 Violence against women and girls

- 16. Violence against women in Australia, including family and domestic violence (FDV), sexual assault and sexual harassment, remains endemic and hinders the realisation of gender equality.¹³
- 17. The Commission commends efforts made under the *National Plan to Reduce Violence against Women and their Children 2010–22* (the National Plan),¹⁴ the Council of Australian Government's commitments under the Close the Gap framework,¹⁵ and the additional funding committed in 2015 to both prevention and response measures and services.¹⁶
- 18. The intersection of gender with other forms of inequality results in women with disability, Aboriginal and Torres Strait Islander women, lesbian, bisexual, trans and intersex women (LGBTI), and women from culturally and linguistically diverse (CALD) backgrounds experiencing higher rates of FDV and other forms of violence, and additional barriers to seeking help and support.¹⁷ While the Commission welcomes targeted actions under the *Third Action Plan (2016-19)* (Third Action Plan) under the National Plan to address violence against women with disability,¹⁸ the Government did not accept a 2015 Senate inquiry recommendation that the National Plan be updated to include institutional and disability accommodation settings.¹⁹
- 19. The Commission also notes that Indigenous women are at higher risk of violence, compared to the general population.²⁰ The Commission has made a number of submissions that make recommendations to address violence against Indigenous women and their children,²¹ emphasising that any reforms must be developed in consultation with Indigenous women, in a manner consistent with the principle of free, prior and informed consent.²²
- 20. The Commission is also concerned about the lack of Australia-wide data on FDV related deaths. The Commission welcomes the Government's funding to examine measures to ensure national coherence and collection of data on FDV deaths,²³ and encourages the Government to act on the findings of the Commission's review of Domestic Violence Death Review mechanisms in Australia, when released.

Recommendation 3: That the Australian Government:

- (i) **Undertake specific research to understand the nature and prevalence of family and domestic violence, sexual assault and sexual harassment for women and girls with disability, LGBTI women and girls, Aboriginal and Torres Strait Islander women and girls and women and girls from CALD backgrounds, and implement evidence-based policy responses to reduce violence against these groups of women.**
- (ii) **Accelerate action to reduce violence against Aboriginal and Torres Strait Islander women and children, including targeted prevention and early intervention initiatives, which must be developed in consultation with Indigenous women, in a manner consistent with the principle of free, prior and informed consent.**
- (iii) **Ensure that subsequent Action Plans to the National Plan support prevention and early intervention initiatives and improve support for women with disability who experience violence, including in institutional and disability accommodation settings.**
- (iv) **Act on the findings the Commission’s review of Domestic Violence Death Review mechanisms in Australia, when released.**

4.2 *Sexual harassment and sexual assault in the workplace and in university settings (LOI 16)*

21. The Commission’s 2012 national workplace sexual harassment survey found that 21% of people in Australia had experienced sexual harassment since the age of 15, with the majority (68%) experiencing this harassment in the workplace.²⁴ The survey found that one-third of women (33%) had experienced sexual harassment since the age of 15, compared to 9% of men.²⁵
22. The Commission commends the Government’s funding of the Commission’s 2018 survey, which is currently underway. As well as expanding the number of participants from 2,000 to 10,000, the survey will for the first time, provide additional data on sexual harassment within major industry sectors.

Recommendation 4: That the Australian Government ensure there are adequate measures in place for the prevention of and response to sexual harassment in the workplace, with consideration of the identified strategies in the Commission’s 2012 survey report and the forthcoming outcomes of the 2018 survey.

4.3 *Health and wellbeing of women and girls*

23. The rate of suicide in women and girls is increasing and reached a 10-year high in 2015, at a rate of 6.1 deaths per 100,000 people. Two-thirds of intentional self-harm cases hospitalised in Australia in 2014–15 were female, with the highest number of cases occurring among females aged 15–19.²⁶
24. Young mothers are an at-risk group who frequently experience poor life outcomes, such as poverty and long-term welfare dependency,²⁷ poor emotional health and wellbeing,²⁸ and inability to complete study or gain secure employment.²⁹ The Commission draws the Committee’s attention to the

recommendations in Chapter 3 of the National Children's Commissioner's *Children's Rights Report 2017*, relating to data and research, and policies and programs to support young parents and their children in Australia.³⁰

25. The Commission remains concerned that sterilisation of women and girls with disability, without consent, continues to occur in Australia.³¹
26. The Commission is concerned that women born with intersex variations remain subject to medically unnecessary medical interventions in circumstances where they are unable to provide full and informed consent.³²

Recommendation 5: That the Australian Government ensure appropriate mental health services for women and girls at risk of self-harm and suicide.

Recommendation 6: That the Australian Government support, and improve outcomes for, young mothers and their children, with particular reference to the recommendations in the *Children's Rights Report 2017*.

Recommendation 7: That the Australian Government ensure adequate protections are in place to prevent involuntary or coerced sterilisation of women and girls with disability.

Recommendation 8: That the Australian Government ensure adequate legal and policy protections are in place to prevent medically unnecessary and/or harmful medical interventions on women and girls born with intersex variations.

5 Women and work (CO 38–39, LOI 16, CEDAW article 11)

27. There are a range of gender equality gaps in Australia that affect women's rights to work, to just and favourable conditions of work and to adequate standard of living for themselves and their family.³³
28. The Commission has consistently highlighted issues for women in the workplace, including occupational segregation,³⁴ the gender pay gap, the under-valuing of unpaid care work, the low representation in leadership and management positions,³⁵ access to adequate paid parental leave and greater flexibility in how and when to take the leave,³⁶ the absence of superannuation from paid parental leave,³⁷ and the resulting gender gap in retirement savings.³⁸
29. The Commission has made a number of recommendations in key reports and submissions that are relevant to women's economic security and workforce participation.³⁹
30. The Commission understands that there is currently uncertainty about future iterations of the Time Use study by the Australian Bureau of Statistics, which is an important record of women's work and provided accurate data concerning the extent and distribution of unpaid work and its intersection with paid work.⁴⁰

31. The Commission is also concerned that there are currently no comprehensive coverage of workplace protections for employees who experience family and domestic violence (FDV).⁴¹ Women who experience FDV may face adverse treatment in the workplace that is specifically related to their experiences of violence. For example, they may be denied leave or flexible work arrangements to attend violence-related matters, such as moving into a shelter; they may have their employment terminated; or they may be transferred or demoted.⁴² This treatment can exacerbate the costs and consequences of FDV.⁴³

Recommendation 9: That the Australian Government:

- (i) Implement targeted measures to reduce gender segregation in Australian workplaces.⁴⁴**
- (ii) Implement targeted strategies to address the gender pay gap and women's economic insecurity in retirement.⁴⁵**
- (iii) Implement the relevant recommendations in the Supporting Working Parents: Pregnancy and Return to Work National Review Report.⁴⁶**
- (iv) Provide for a minimum period of government-funded paid parental leave of 26 weeks, and an additional minimum of four weeks paid leave, which may only be taken by the supporting parent.**
- (v) Provide superannuation entitlements as part of paid parental leave.**
- (vi) Consider removing the 12 month qualifying period for parental leave, and allow for greater flexibility in how and when to take the paid leave.**
- (vii) Commit to funding future editions of the ABS Time Use study, to collect accurate data concerning the extent and distribution of unpaid work and its intersection with paid work.**
- (viii) Include family and domestic violence leave in the National Employment Standards and modern awards.**
- (ix) Recognise family and domestic violence as a protected attribute within existing anti-discrimination legislation and federal employment laws.**

6 Discrimination faced by Muslim women (CEDAW articles 1–3, LOI 4)

32. Australian research has continued to find that Muslim women are frequent targets of bigotry and discrimination because of their visibility, particularly with the Islamic headscarf. They are particularly vulnerable when unaccompanied, with children, or pregnant at the time of the incident.⁴⁷

Recommendation 10: That the Australian Government take steps to safeguard the rights of Muslim women and to eliminate the particular discrimination that they face.

7 Women in rural, regional and remote areas (CEDAW article 14)

33. National consultations by Sex Discrimination Commissioner in 2016 identified that women living in rural, regional and remote Australia experience negative and discriminatory gender-based stereotypes and attitudes.⁴⁸ They also

experience a gender gap in leadership, access to services, economic security and education; and higher rates of violence, sexual harassment and sexism.⁴⁹

Recommendation 11: That the Australian Government examine strategies to address the particular discrimination faced by women in rural, regional and remote areas, specifically in the areas of violence against women and sexual harassment, and barriers to economic security.

8 Older women and homelessness (LOI 16, CEDAW articles 1 and 11)

34. The Commission's *Willing to Work National Inquiry into Employment Discrimination against Older Australians and Australians with Disability* (Willing to Work Report)⁵⁰ found that, while labour force participation for older people has been growing in recent years, particularly for older women, labour force participation continues to decline with age.⁵¹ Older, single women are increasingly vulnerable to housing stress, insecurity and homelessness.⁵²
35. The Commission is also concerned about elder abuse, which can include psychological/emotional abuse; physical abuse; sexual abuse; financial abuse; and neglect.⁵³ Women, along with a number of other vulnerable groups, have heightened vulnerability to elder abuse.⁵⁴
36. The Commission welcomes the Australian Law Reform Commission's (ALRC) report *Elder Abuse—A National Legal Response*,⁵⁵ as well as the Government's commitment to developing a national plan to better protect the rights of older Australians.⁵⁶

Recommendation 12: That the Australian Government implement all of the recommendations of the Willing to Work Report.

Recommendation 13: That the Australian Government implement all of the recommendations of the ALRC's report on Elder Abuse, including the development of a national plan to tackle elder abuse.

9 Human trafficking and modern slavery (CO 30–31, LOI 12, CEDAW article 6)

37. The Commission commends the Government's development of a *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*⁵⁷ and supporting initiatives.⁵⁸
38. The Commission supports the recommendations of the Special Rapporteur on trafficking in persons,⁵⁹ that the Australian Government establish a federal, comprehensive compensation scheme for survivors of trafficking.⁶⁰
39. The Commission also notes that unregulated international surrogacy arrangements raise concerns about the potential for the trafficking of women and children.⁶¹

Recommendation 14: That the Australian Government consider the development of a federal compensation scheme for survivors of human trafficking and slavery; and development of a regulatory regime addressing international surrogacy arrangements.

10 Aboriginal and Torres Strait Islander women and girls (LOI 4 and 19, CEDAW articles 1–4, 11, 13 and 15)

40. Aboriginal and Torres Strait Islander women and girls continue to face systemic and structural barriers to the realisation of their human rights.
41. At 34% of the adult female prison population, Aboriginal and Torres Strait Islander women are the fastest growing and most overrepresented prison population.⁶²
42. The Commission has consistently recommended that the Australian Government establish nationally agreed justice targets and strategies aimed at significantly reducing the number of Indigenous people in detention or gaol.⁶³
43. Indigenous women's over-representation in the justice system is also a factor that contributes to Indigenous children being removed from their families and put into care in increasing numbers.⁶⁴
44. The Commission welcomes the findings of the Royal Commission into the Protection and Detention of Children in the Northern Territory⁶⁵ and other recent inquiries into child protection that make recommendations for improving child safety and the treatment of children and young people in out of home care and detention facilities.⁶⁶
45. The Commission welcomes the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse to respond to sexual abuse of children within private, public and non-government institutions and ensure child safe organisations into the future.⁶⁷
46. The Australian Government's social security measures, including the Cashless Debit Card, continue to have a disproportionate impact on Aboriginal and Torres Strait Islander people and, in particular, Indigenous women.⁶⁸ Where the Cashless Debit Card takes a blanket mandatory approach and is not a community-led initiative, this disproportionately affects the most vulnerable—such as Indigenous women and single parents.⁶⁹
47. The Commission has also raised concerns about the impact of the Australian Government's Community Development Programme on Aboriginal and Torres Strait Islander people, which disproportionately affects the most vulnerable such as Indigenous women and single parents,⁷⁰ and has made detailed recommendations for a new model.⁷¹

Recommendation 15: That the Australian Government:

- (i) Engage with Aboriginal and Torres Strait Islander women in the development of all policies and services that affect them, consistent with the United Nations Declaration on the Rights of Indigenous Peoples.**
- (ii) Establish national justice targets, including specifically relating to Indigenous women, and adequate services, to reduce the overrepresentation of Indigenous peoples in the justice system.**
- (iii) Ensure appropriate support for Aboriginal and Torres Strait Islander women, children and their families to reduce high rates of contact with the child protection system.**
- (iv) Work with state and territory governments to respond to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and the Royal Commission into Institutional Responses to Child Sexual Abuse, particularly as they relate to child protection issues.**

Recommendation 16: That the Australian Government reform the Cashless Debit Card model to a voluntary, opt-in welfare income management measure, which is community-led.

Recommendation 17: That the Australian Government reform the Community Development Programme to reflect a human rights based, community-led, wage-based model.

11 Immigration and citizenship (LOI 22, CEDAW article 16)

- 48. The Commission has concerns about a range of immigration policies that can lead to prolonged family separation, with detrimental impacts on (often vulnerable) women and children.⁷²
- 49. Numerous reports and inquiries have consistently documented concerns about living conditions for people subject to third country processing in Nauru.⁷³ There have been several incidents in which people (including women) have reportedly been physically attacked or sexually assaulted.⁷⁴

Recommendation 18: That the Australian Government implement specific measures to avoid family separation resulting from immigration policies.

Recommendation 19: That the Australian Government ensure that the human rights of people subject to third country processing are adequately protected.

Attachment 1: Compilation of Recommendations

Priority areas

The matters addressed in this submission are all of importance to Australia's compliance with CEDAW. However, the Commission wishes to draw the Committee's attention to three areas of particular importance:

- (i) The need to accelerate action to address the key issues facing Aboriginal and Torres Strait Islander women and children, including targeted prevention and early intervention initiatives to reduce violence against Indigenous women and children (section 4.1, Recommendation 3(ii)); the high rates of contact with the child protection system (section 10, Recommendation 15); and the high rates of Indigenous women in the justice system (section 10, Recommendation 15).
- (ii) The need to ensure adequate measures for the prevention of and response to sexual harassment in the workplace, with consideration of the identified strategies in the Commission's 2012 survey report and the forthcoming outcomes of the 2018 survey, as discussed in section 4.2 (see Recommendation 4).
- (iii) The need to address existing barriers to women's equal participation in the workforce and the gender gap in retirement savings, as discussed in section 5 (see Recommendation 9).

The Commission recommends that the Committee request an update from the Australian Government on progress in relation to the above priority areas in 12 months, under article 18 of CEDAW and Rule 48 of the Rules of Procedure.

Recommendation 1: That the Australian Government ensure that:

- (i) Concerns raised by the Parliamentary Joint Committee on Human Rights are fully considered in the legislative process.
- (ii) All statements of compatibility are consistently of a high standard and are supported by evidence and analysis.

Recommendation 2: That the Australian Government:

- (i) Fully incorporate CEDAW into Australian law.
- (ii) Amend the *Sex Discrimination Act 1984* to improve its effectiveness, consistent with the Commission's recommendations to Australia's Second Universal Periodic Review.⁷⁵

Recommendation 3: That the Australian Government:

- (i) Undertake specific research to understand the nature and prevalence of family and domestic violence, sexual assault and sexual harassment for women and girls with disability, LGBTI women and girls, Aboriginal and Torres Strait Islander women and girls and women and girls from CALD backgrounds, and implement evidence-based policy responses to reduce violence against these groups of women.
- (ii) Accelerate action to reduce violence against Aboriginal and Torres Strait Islander women and children, including targeted prevention and

early intervention initiatives, which must be developed in consultation with Indigenous women, in a manner consistent with the principle of free, prior and informed consent.

- (iii) Ensure that subsequent Action Plans to the National Plan support prevention and early intervention initiatives and improve support for women with disability who experience violence, including in institutional and disability accommodation settings.
- (iv) Act on the findings the Commission's review of Domestic Violence Death Review mechanisms in Australia, when released.

Recommendation 4: That the Australian Government ensure there are adequate measures in place for the prevention of and response to sexual harassment in the workplace, with consideration of the identified strategies in the Commission's 2012 survey report and the forthcoming outcomes of the 2018 survey.

Recommendation 5: That the Australian Government ensure appropriate mental health services for women and girls at risk of self-harm and suicide.

Recommendation 6: That the Australian Government support, and improve outcomes for, young mothers and their children, with particular reference to the recommendations in the *Children's Rights Report 2017*.

Recommendation 7: That the Australian Government ensure adequate protections are in place to prevent involuntary or coerced sterilisation of women and girls with disability.

Recommendation 8: That the Australian Government ensure adequate legal and policy protections are in place to prevent medically unnecessary and/or harmful medical interventions on women and girls born with intersex variations.

Recommendation 9: That the Australian Government:

- (i) Implement targeted measures to reduce gender segregation in Australian workplaces.⁷⁶
- (ii) Implement targeted strategies to address the gender pay gap and women's economic insecurity in retirement.⁷⁷
- (iii) Implement the relevant recommendations in the Supporting Working Parents: Pregnancy and Return to Work National Review Report.⁷⁸
- (iv) Provide for a minimum period of government-funded paid parental leave of 26 weeks, and an additional minimum of four weeks paid leave, which may only be taken by the supporting parent.
- (v) Provide superannuation entitlements as part of paid parental leave.
- (vi) Consider removing the 12 month qualifying period for parental leave, and allow for greater flexibility in how and when to take the paid leave.
- (vii) Commit to funding future editions of the ABS Time Use study, to collect accurate data concerning the extent and distribution of unpaid work and its intersection with paid work.
- (viii) Include family and domestic violence leave in the National Employment Standards and modern awards.

- (ix) **Recognise family and domestic violence as a protected attribute within existing anti-discrimination legislation and federal employment laws.**

Recommendation 10: That the Australian Government take steps to safeguard the rights of Muslim women and to eliminate the particular discrimination that they face.

Recommendation 11: That the Australian Government examine strategies to address the particular discrimination faced by women in rural, regional and remote areas, specifically in the areas of violence against women and sexual harassment, and barriers to economic security.

Recommendation 12: That the Australian Government implement all of the recommendations of the Willing to Work Report.

Recommendation 13: That the Australian Government implement all of the recommendations of the ALRC's report on Elder Abuse, including the development of a national plan to tackle elder abuse.

Recommendation 14: That the Australian Government consider the development of a federal compensation scheme for survivors of human trafficking and slavery; and development of a regulatory regime addressing international surrogacy arrangements.

Recommendation 15: That the Australian Government:

- (i) **Engage with Aboriginal and Torres Strait Islander women in the development of all policies and services that affect them, consistent with the United Nations Declaration on the Rights of Indigenous Peoples.**
- (ii) **Establish national justice targets, including specifically relating to Indigenous women, and adequate services, to reduce the overrepresentation of Indigenous peoples in the justice system.**
- (iii) **Ensure appropriate support for Aboriginal and Torres Strait Islander women, children and their families to reduce high rates of contact with the child protection system.**
- (iv) **Work with state and territory governments to respond to the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory, and the Royal Commission into Institutional Responses to Child Sexual Abuse, particularly as they relate to child protection issues.**

Recommendation 16: That the Australian Government reform the Cashless Debit Card model to a voluntary, opt-in welfare income management measure, which is community-led.

Recommendation 17: That the Australian Government reform the Community Development Programme to reflect a human rights based, community-led, wage-based model.

Recommendation 18: That the Australian Government implement specific measures to avoid family separation resulting from immigration policies.

Recommendation 19: That the Australian Government ensure that the human rights of people subject to third country processing are adequately protected.

¹ Further information about the Commission's complaints function can be found at www.humanrights.gov.au.

² This submission is based on work that has been undertaken by the Commission in accordance with its mandate and functions, or otherwise on publicly available information. The Commission has brought the issues raised in this submission to the attention of the Australian Government.

This submission provides information concerning sex discrimination experienced by key population groups in Australia and other thematic issues relating to sex discrimination. In relation to each section, the Commission has, where appropriate, referred to the relevant articles of CEDAW engaged, the relevant paragraph of the Committee's concluding observations on Australia's sixth and seventh reports (**CO**) and the Committee's list of issues (**LOI**) and questions in relation to the eighth periodic report of Australia.

³ The PJCHR analyses bills and legislative instruments introduced into the federal Parliament for compliance with human rights.

The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires each bill, regulation and ordinance introduced into Parliament to be accompanied by a statement of compatibility with human rights, defined as the seven core international human rights instruments to which Australia is a party. See: *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), ss 8, 9. At <https://www.legislation.gov.au/Details/C2011A00186> (viewed 11 September 2017).

⁴ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 477, 506–7. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).

⁵ George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469, 474–5. At <http://www.austlii.edu.au/au/journals/MonashULawRw/2015/17.html> (viewed 11 September 2017).

For example, some statements of compatibility devote cursory attention to assessing a draft law's identified impingement on human rights and some simply assert (without due explanation) that a draft law is compatible with human rights even where an impingement on rights has been acknowledged. See: Shawn Rajanayagam, 'Does Parliament Do Enough? Evaluating Statements of Compatibility under the *Human Rights (Parliamentary Scrutiny) Act*' (2015) 38(3) *University of New South Wales Law Journal* 1046, 1069–1070. At <http://www.austlii.edu.au/cgi-bin/download.cgi/cgi-bin/download.cgi/download/au/journals/UNSWLJ/2015/37.pdf> (viewed 11 September 2017).

The Australian Law Reform Commission has made a number of suggestions to improve the mechanisms and processes for the scrutiny of laws for compatibility with rights and freedoms (including the PJCHR).

See: Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws* (Final Report) (2016) 75–76 [3.95].

At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017). The ALRC's suggestions include additional guidance to policy makers during policy development and legislative drafting stages; improving quality of explanatory material and statements of compatibility; effective and appropriate streamlining of overlapping work across scrutiny committees; increasing time available to conduct scrutiny; and improving extent to which Parliament considers the scrutiny reports.

⁶ Parliamentary scrutiny processes include the Senate Standing Committee on Regulations and Ordinances, Senate Standing Committee for the Scrutiny of Bills, Parliamentary Joint Committee on Human Rights, Senate Standing Committee on Legal and Constitutional Affairs, Parliamentary Joint Committee on Intelligence and Security and Parliamentary Joint Committee on Law Enforcement. Other review mechanisms include the Australian Human Rights Commission, Independent National Security Legislation Monitor and Australian Law Reform Commission. See Australian Law Reform Commission, *Traditional Rights and Freedoms — Encroachments by Commonwealth Laws* (Final Report) (2016) Ch 3. At https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_129_final_report_.pdf (viewed 11 September 2017).

⁷ Australian Government, *List of issues and questions in relation to the eighth periodic report of Australia – Replies of Australia* (16 March 2018), paras 5-6. At: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUS%2fQ%2f8%2fAdd.1&Lang=en (viewed 30 May 2018).

⁸ This was confirmed by the Senate Legal and Constitutional Committee's 2008 review of the SDA in 2008, which found that while the SDA has had an impact on the most overt forms of sex discrimination, it has been less successful in addressing systemic discrimination. See: Parliament of Australia, *Senate Standing Committee on Legal and Constitutional Affairs – Report on the effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (December 2008) 47. At: https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2008-10/sex_discrim/report/index (viewed 31 May 2018).

⁹ The Commission, in its submission under the Universal Periodic Review process, recommended that Australia's human rights obligations be directly incorporated into Australian law. See: Australian Human Rights Commission, *Submission under the Universal Periodic Review Process: Australia's Second Universal Periodic Review* (2015), 8. At: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 31 May 2018).

¹⁰ For example, through the adoption of a national human rights Act. See: Dubravka Šimonović, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia*, UN Doc A/HRC/38/47/Add.1 (17 April 2018) 90(B). At: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Pages/ListReports.aspx> (viewed 31 May 2018).

¹¹ The Commission has noted the need for outstanding recommendations from the 2008 Senate Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender to be implemented to strengthen the effectiveness of the *Sex Discrimination Act*, as well as the need for other amendments to the *Sex Discrimination Act* relating to domestic violence. See Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report* (2014), p 118. At <https://www.humanrights.gov.au/publications/supporting-working-parents-pregnancy-and-return-work-national-review-report> (viewed 31 May 2018); Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law* (2011). At <http://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law#Heading689> (viewed 31 May 2018); Australian Human Rights Commission, *Supplementary Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law – Domestic and Family Violence* (2012). At <http://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law-domestic-and-family-violence> (viewed 31 May 2018). A 2008 report reviewed the effectiveness of the *Sex Discrimination Act*. Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act* (December 2008). At http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf (viewed 31 May 2018).

¹² Australian Human Rights Commission, *Submission under the Universal Periodic Review Process: Australia's Second Universal Periodic Review* (2015), 18. At: <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 31 May 2018).

¹³ Australian Bureau of Statistics, *Personal Safety, Australia, Key Findings 2016* (11 Nov 2017). At: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0> (viewed 13 May 2018).

Since the age of 15, one in six women have experienced partner violence and one in five women have experienced sexual violence, and one in two women have experienced sexual harassment during their lifetime.

The majority of murders of women in Australia can be attributed to family and domestic violence (FDV) related homicides. In 2016, 42% of murders recorded nationally were FDV-related (95 victims). Female victims of FDV-related murder accounted for 65% of all female victims of murder recorded during 2016. See: Australian Bureau of Crime Statistics, *Recorded Crime – Victims, Australia 2016* (6 July 2017). At: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2016~Main%20Features~Victims%20of%20Family%20and%20Domestic%20Violence%20Related%20Offences~6> (viewed 25 May 2018).

¹⁴ The National Plan is a twelve-year plan which aims to coordinate actions across Australian jurisdictions to reduce levels of violence against women and children. See Council of Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010–2022*, 2011. At: https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan_accessible.pdf (viewed 30 May 2018).

¹⁵ Council of Australian Governments, *National Plan to reduce violence against women and their children*, 2011, 7. At <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> (viewed 30 May 2018). See also Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2017*, 95-96. At <http://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2017.pdf> (viewed 30 May 2018).

¹⁶ Council of Australian Governments, *COAG Meeting Communique* (17 April 2015). At <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-17-april-2015> (viewed 30 May 2018); Malcolm Turnbull, Media Release: *Women's Safety Package to #StoptheViolence* (24 September 2015). At <http://www.malcolmturnbull.com.au/media/release-womens-safety-package-to-stoptheviolence> (viewed 30 May 2018).

¹⁷ Victorian Health Promotion Foundation, *Preventing Violence against Women in Australia: Research Summary* (1 February 2017). At <https://www.vichealth.vic.gov.au/media-and-resources/publications/violence-against-women-in-australia-research-summary> (viewed 30 May 2018). Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, *Framework foundations 2: Think pieces, stakeholder consultations, issues, implications and approach Companion document to Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia* (2015) 14. At: <https://www.ourwatch.org.au/getmedia/a415a239-5de6-4dbd-806d-4e92a53e532e/Change-the-story-framework-foundations-2.pdf.aspx> (viewed 30 May 2018)

¹⁸ Australian Government Department of Social Services, *Third Action Plan 2016-19 of the National Plan to Reduce Violence Against Women and their Children 2010-2022* (2016). At <https://www.dss.gov.au/women/programs-services/reducing-violence/third-action-plan> (viewed 13 May 2018).

¹⁹ Parliament of Australia, Senate Community Affairs Reference Committee, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (25 November 2015), xxiii [10.68], Recommendation 24. At

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Report (viewed 30 May 2018).

²⁰ The Commission has reported to the UN on violence against Aboriginal and Torres Strait Islander women and to Commonwealth Inquiries. See Australian Human Rights Commission, *Australia's Universal Periodic Review on human rights – Annual Progress Reports*. At <https://www.humanrights.gov.au/australias-universal-periodic-review-human-rights> (viewed 30 May 2018). Australian Human Rights Commission, Submission No 57 to Senate Standing Committee on Community Affairs, Parliament of Australia, *Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings* (11 February 2015) 3. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect (viewed 30 May 2018); Australian Human Rights Commission, Submission No 41 to the Senate Finance and Public Administration Reference Committee, *Inquiry into Domestic Violence and Gender Inequality* (4 April 2016). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administrati on/DV_and_Gender_Inequality (viewed 30 May 2018).

They are hospitalised for family violence-related assault at 30 times the rate of non-Indigenous women. See: Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Prime Minister's Report 2017* (14 February 2017), 95. At <https://www.pmc.gov.au/resource-centre/indigenous-affairs/closing-gap-prime-ministers-report-2017> (viewed 30 May 2018).

²¹ Australian Human Rights Commission, *Submission to the Special Rapporteur on Violence against Women* (January 2017). At: <https://www.humanrights.gov.au/submissions/violence-against-women-australia-2017> (viewed 21 May 2018); Australian Human Rights Commission, *Social Justice and Native Title Report* (2016). At: <https://www.humanrights.gov.au/publications/aboriginal-and-torres-strait-islander-social-justice> (viewed 21 May 2018); Australian Human Rights Commission, *Social Justice and Native Title Report* (2012). At: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-report-11> (viewed 22 May 2018); Close 17

the Gap Campaign Steering Committee, *Progress and Priorities Report* (2017). At: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-progress-0> (viewed 21 May 2018); Tom Calma, Aboriginal and Torres Strait Islander, Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues* (June 2006) Human Rights and Equal Opportunity Commission, 5–6. 22–31. At https://www.humanrights.gov.au/sites/default/files/document/publication/family_violence2006.pdf (viewed 30 May 2018).

²² Article 19, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/Res/61/295 (13 September 2007).

²³ Australian Human Rights Commission, *A National System for Domestic and Family Violence Death Review* (2017), 12. At

https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2016_12_19_Expanding_DV_Death_Review.pdf (viewed 30 May 2018).

²⁴ Australian Human Rights Commission, *Working without fear: Results of the Sexual Harassment National Telephone Survey* (2012), 12. At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/working-without-fear-results-sexual-harassment-national> (viewed 30 May 2018).

²⁵ Australian Human Rights Commission, *Working without fear: Results of the Sexual Harassment National Telephone Survey* (2012), 12. At <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/working-without-fear-results-sexual-harassment-national> (viewed 30 May 2018).

²⁶ Australian Institute of Health and Welfare, *Trends in hospitalised injury, Australia 1999–00 to 2014–15* (2018) 97. At <https://www.aihw.gov.au/getmedia/03743fe9-1ed1-4fe8-9a66-0808405be319/aihw-injcat-190.pdf.aspx?inline=true> (viewed 22 May 2018).

²⁷ The Department of Social Services' *Baseline Valuation Report* stated that about 1,500 females entered the system as young parents between the ages of 14 and 18 during 2015. This group is estimated to have an average lifetime welfare cost of approximately \$540,000. See Department of Social Services: *Baseline Valuation – Final Report* (2016), 114. At: <https://www.dss.gov.au/baseline-valuation-report-0> (viewed 30 May 2018).

²⁸ Kate Butler et al, Institute of Child Protection Studies, Australian Catholic University, *Experiences and Aspirations of Younger Mothers* (2010), 40. At:

http://www.acu.edu.au/about_acu/research/about_us/research_centres_-and_institutes/institute_of_child_protection_studies/our_work/current_previous_work/completed_2010/understanding_younger_mothers/?a=464607 (viewed 30 May 2018).

²⁹ The Association of Women Educators, *What it Takes: Supporting pregnant and parenting young people* (2010), 29. At http://www.awe.asn.au/drupal/sites/default/files/what_it_takes.pdf (viewed 30 May 2018).

³⁰ Australian Human Rights Commission, *Children's Rights Report 2017* (2018). At: <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2017> (viewed 13 May 2018).

³¹ Senate Standing Committee on Community Affairs, Parliament of Australia, *Involuntary or coerced sterilisation of people with disability in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/~media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/first_report/report_ashx (viewed 30 May 2018); Australian Human Rights Commission, Submission No 5 to Senate Standing Committee on Community Affairs, *Involuntary or coerced sterilisation of people with disability in Australia* (20 November 2012). At <http://www.aph.gov.au/DocumentStore.ashx?id=3d3c9b64-7a59-4e30-bd96-e38d52fe85c8&subId=16108> (viewed 30 May 2018).

In its Submission to the Senate Community Affairs References Committee on the involuntary or coerced sterilisation of people with disabilities in Australia (2012), the Commission made recommendations that:

- National legislation be enacted to criminalise involuntary or forced sterilisation—except when there are serious threats to life or health.
- Criminalising removing a child or adult with disability from Australia with the intent of having them sterilised overseas.
- Establishing a national system to monitor the number of applications and orders made for sterilisation.
- Improving education regarding the sexual and reproductive rights of people with disability in Australia and the rights enshrined in the CRPD.

³² Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, 57. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual> (viewed 30 May 2018). See, for example, *Re: Carla (Medical Procedure)* [2016] FamCA 7.

The Senate Community Affairs Committee conducted an inquiry into the involuntary or coerced sterilisation of intersex people in Australia in 2013. See: Senate Standing Committee on Community Affairs, *Involuntary or coerced sterilisation of intersex people in Australia* (2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index (viewed 30 May 2018).

The Commission is concerned that many of the inquiry's recommendations have not been implemented.

³³ The Australian Bureau of Statistics (ABS), in its Gender Indicators release, presents a summary of gender-specific data in six areas of social concern for gender equality: Economic Security, Education, Health, Work and Family Balance, Safety and Justice, and Democracy, Governance and Citizenship. The Workplace Gender Equality Agency (WGEA) also collects data from certain employers to track progress on key gender equality measures.

³⁴ See for example: Australian Human Rights Commission, *Submission to the Senate inquiry into the economic security for women in retirement* (30 October 2015). At: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Submissions (viewed 18 May 2018).

Gender segregation in the workplace is a persistent feature of the Australian workforce. Gender segregation occurs at occupation, role and industry levels. In 2015, less than 30% of workers in the Workplace Gender Equality Agency's reporting organisations worked in gender balanced organisations.

³⁵ Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard: Key Results from the Workplace Gender Equality Agency's 2015-16 Reporting Data* (November 2016) 4. At https://www.wgea.gov.au/sites/default/.../80653_2015-16-gender-equality-scorecard.pdf (viewed 30 May 2018); Australian Institute of Company Directors, 30% by 2018 Gender Diversity Progress Report (16 June 2017). At: <https://aicd.companydirectors.com.au/advocacy/board-diversity/30-per-cent-by-2018-gender-diversity-target-slipping-out-of-reach> (viewed 30 May 2018).

A survey undertaken by Chief Executive Women found that women hold just 12% of line roles and 30% of functional roles in executive leadership teams: Chief Executive Women, *Senior Executive Census 2017*. At: <https://cew.org.au/wp-content/uploads/2017/09/CEW-Executive-Census-2017.pdf> (viewed 20 September 2017).

In the public service, women make up 58.7% of employees, but only 41.8% of the Senior Executive Service: Australian Government, *Balancing the Future: The Australian Public Service Gender Equality Strategy 2016-19*, 28 September 2016, 4. At: <https://www.pmc.gov.au/resource-centre/office-women/gender-balance-australian-government-boards-report-2015-16> (viewed 20 September 2017).

³⁶ Australia's Sex Discrimination Commissioner has advocated for the relaxation of existing laws that require women to work for 12 months before they are eligible to access parental leave. See: Susie O'Brien, 'Working parents need support', *Herald Sun* (9 September 2017).

³⁷ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), 4.1. At <http://www.pc.gov.au/inquiries/completed/parental-support/report> (viewed 30 May 2018).

The *Paid Parental Leave Act 2010* (Cth) came into effect as a result of the Productivity Commission's 2009 Inquiry Report, which recommended a paid postnatal period of 18 weeks.

The Commission supported the Inquiry Report's recommendation that superannuation entitlements be provided to mothers, subject to certain conditions (Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), 2.12. At <http://www.pc.gov.au/inquiries/completed/parental-support/report>.) (viewed 30 May 2018).

³⁸ Australian Human Rights Commission, *Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women* (5 July 2010). At <https://www.humanrights.gov.au/australia-s-implementation-convention-elimination-all-forms-discrimination-against-women-cedaw-2010> (viewed 30 May 2018); Australian Human Rights Commission, Submission No 35 to the Senate Finance and Public Administration References Committee, *inquiry into gender segregation in the workplace and its impact on women's economic* 19

equality (6 March 2017). At: <https://www.humanrights.gov.au/submissions/gender-segregation-workplace-and-its-impact-women-s-economic-equality> (viewed 30 May 2018).

³⁹ The relevant reports and submissions are:

[Submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave](#) (24 November 2008).

[Investing in care: Recognising and valuing those who care](#) (2013).

[Supporting Working Parents: Pregnancy and Return to Work National Review Report](#) (2014), and the relevant recommendations directed at government.

[Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#) (2015).

[Submission to the Senate inquiry into the economic security for women in retirement](#) (2015).

[Submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017).

⁴⁰ Senate Finance and Public Administration References Committee, *Report on the inquiry into gender segregation in the workplace and its impact of women's economic equality*, 10, June 2017. At:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Gendersegregation/Report (viewed 14 September 2017).

The Senate inquiry into gender segregation in the workplace and its impact on women's economic equality recommended that the ABS Time Use study recommence on a regular basis. See: Senate Finance and Public Administration References Committee, *Report on the inquiry into gender segregation in the workplace and its impact of women's economic equality*, (June 2017), Recommendation 9. At:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Gendersegregation/Report (viewed 30 May 2018).

⁴¹ As of 2013, over one million Australian employees could access leave and other protections made available through domestic violence clauses in agreement or award conditions. See: Ludo McFerran, Safe at Home, Safe At Work Project, Australian Domestic and Family Violence Clearing House, UNSW, 'When domestic violence becomes a workplace problem', *ABC The Drum* (online) (13 February 2013). At <http://www.abc.net.au/news/2013-02-13/mcferran-domestic-violence-and-fair-work-act/4516492> (viewed 30 May 2018).

All Australian governments have introduced domestic violence protections for their public servants, some of which include paid leave. See: See NSW Crown Employees (Public Service Conditions of Employment) Award 2009 and a further 60 State Government Awards linked to this provision; Queensland Government Special Leave Directive 02/2012; Northern Territory Government Commissioner's Guideline for Miscellaneous Leave (domestic, family and sexual violence) 08/2012; Australian Public Service Circular 2012/3: Supporting Employees Affected by Domestic or Family Violence 10/2012; Tasmanian Ministerial Direction No. 28 Family Violence – Workplace Arrangements and Requirements 11/12; Fiona Richardson, Minister for Women and the Prevention of Family Violence, and Natalie Hutchins, Minister for Industrial Relations, 'Victoria to lead the way on family violence leave' (Media Release, 17 August 2015). At <http://www.premier.vic.gov.au/victoria-to-lead-the-way-on-family-violence-leave> (viewed 17 January 2017); Gail Gago, Minister for the Status of Women, 'Paid leave to help break the cycle of domestic violence' (Media Release, 25 November 2015). At <https://www.dcsi.sa.gov.au/services/latest-news/media-releases-2015/paid-leave-to-help-break-the-cycle-of-domestic-violence> (viewed 17 January 2017); Bronwen Overton-Clarke, Commissioner for Public Administration, *Leave for domestic violence purposes advice in the ACT public service*, 8 August 2016. At http://www.cmd.act.gov.au/_data/assets/pdf_file/0010/912934/Leave-for-Domestic-Violence-Purposes-Advice.pdf (viewed 17 January 2017); The Hon. Simone McGurk MP, Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services, 'Domestic violence victims to get the support they deserve in the workplace', (Media Release, 14 June 2017). At: <http://simonemcgurk.com.au/domestic-violence-victims-to-get-the-support-they-deserve-in-the-workplace/> (viewed 14 September 2017).

Many Australian businesses also provide for FDV leave within company policy. See for example: Joanna Mather and Jaclyn Keast, 'Telstra introduces domestic violence leave', *Australian Financial Review* (online) (13 January 2015). At: <http://www.afr.com/news/policy/industrial-relations/telstra-introduces-domestic-violence-leave-20150113-12na7h> (viewed 30 May 2018); National Australia Bank, 'NAB leads the industry in domestic violence support' (Media Release, 2 June 2013). At <http://www.nab.com.au/about-us/media/media-releases-2013/nab-leads-the-industry-in-domestic->

[violence-support](#) (viewed 30 May 2018); Virgin Australia Ground, *Sustainability Report 2015* (2015) 5. At

<https://www.virginaustralia.com/cs/groups/internetcontent/@wc/documents/webcontent/~edisp/sustainability-report.pdf> (viewed 30 May 2018); Male Champions of Change, *Playing our Part: Workplace responses to domestic and family violence* (November 2015). At:

<http://malechampionsofchange.com/domestic-violence-is-a-workplace-issue/> (viewed 30 May 2018).

As part of Australia's Fair Work Commission's review of all modern awards (*Fair Work Act 2009* (Cth) s 156), the Australian Council of Trade Unions sought variations to all modern awards to insert specific provisions relating to FDV leave. See: Australian Council of Trade Unions, 'Case for paid family and domestic violence leave commences at Fair Work Commission', *Media Release*, (14 November 2016). At <http://www.actu.org.au/actu-media/media-releases/2016/case-for-paid-family-and-domestic-violence-leave-commences-at-fair-work-commission> (viewed 30 May 2018).

This application was supported by the Australian Human Rights Commission. See: Australian Human Rights Commission, Submission to the Fair Work Commission, Commonwealth of Australia, *Four yearly review of AM2015/1 Family and domestic violence clause* (5 October 2016). At <https://www.fwc.gov.au/sites/awardsmodernfouryr/common/am2051-sub-ahrc-120516.pdf> (viewed 30 May 2018).

The Fair Work Commission did not grant this claim for paid FDV leave, however accepted that employees should be entitled to unpaid FDV leave. See: Fair Work Commission, Decision – 4 yearly review of modern awards – Family & Domestic Violence Leave Clause (AM2012/1) (3 July 2017). At: <https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20151-family-and> (viewed 30 May 2018).

⁴² Australian Human Rights Commission, Submission to the Australian Law Reform Commission, *Inquiry into Family Violence and Commonwealth Laws* (21 April 2011), [47]. At: http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html (viewed 30 May 2018). See also Donna Chung et al, *Home Safe Home: The link between domestic and family violence and women's homelessness* (2000). At <http://wesnet.org.au/wp-content/uploads/2011/05/homesafehome.pdf> (viewed 30 May 2018).

⁴³ Australian Human Rights Commission, Supplementary Submission to the Attorney-General's Department, Commonwealth of Australia, *Consolidation of Anti-Discrimination Laws* (23 January 2012), [23–25]. At <https://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law-domestic-and-family-violence> (viewed 30 May 2018). See also Australian Human Rights Commission, Submission to the Australian Law Reform Commission, *Inquiry into Family Violence and Commonwealth Laws* (21 April 2011), [47]. At: http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html (viewed 30 May 2018).

⁴⁴ Specifically, the Commission has made the following recommendations in its [submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017):

- a) Actions supporting the reduction of gender segregation in Australian workplaces should be included as a priority in the forthcoming 2018-19 Implementation Plan for the Government Women's Workforce Strategy.
- b) The Commonwealth Government should develop and commit to a strategy for becoming a model 'industry' in reducing gender segregation:
 - i. as an employer (roles and occupations, management levels, flexibility, parental leave arrangements/inducements for men etc)
 - ii. in policy and program design/development, and
 - iii. when contracting (impose contractual terms requiring demonstrated efforts to improve gender balance to 40-40-20 in organisations engaged by Government.)
- c) The Government should fund a quantitative and qualitative study into the features of male and female-dominated workplaces industries and barriers to employees entering non-traditional fields. The study should build on the data held by the Workplace Gender Equality Agency, and of the relevant inquiries and reports previously conducted by the AHRC.
- d) Based on this study, a report should be prepared for Parliament, including:
 - i. proposed guidelines on the use of special measures to reduce gender segregation (i.e. using special measures to support women in male dominated and men in female dominated workplaces, including in non-paid caring roles), and

- ii. Options for facilitating relationships between employers and women's networks to workshop solutions to segregation in male dominated industries, and similar with male workers in female dominated industries.
- e) Research should be conducted on whether there is higher prevalence of sexual harassment/sex discrimination in gender segregated workplaces, and if so, recommendations for change
- a. Noting that, as a first step, the Commission's 2017 workplace sexual harassment prevalence survey, to be conducted mid-year, can examine this issue.
- f) The Department of Foreign Affairs and Trade should partner with the Commission to consult internationally on special measures to reduce workplace gender segregation, focusing on States comparable to Australia in this context.

⁴⁵ The Commission draws the Committee's attention to recommendations made in the following submissions and reports, insofar as they remain relevant to addressing women's economic security, including in retirement:

[Submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave](#) (24 November 2008).

[Investing in care: Recognising and valuing those who care](#) (2013).

[Supporting Working Parents: Pregnancy and Return to Work National Review Report](#) (2014), and the relevant recommendations directed at government.

[Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#) (2015).

[Submission to the Senate inquiry into the economic security for women in retirement](#) (2015).

[Submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017).

The Commission also recommends the following reforms to the superannuation system:

- a) Removal of the \$450 superannuation guarantee threshold,
- b) Payment of a superannuation contribution on parental leave, family care leave and workers compensation,
- c) The Low Income Superannuation Contribution be extended permanently,
- d) The payment of superannuation on carer payments is costed with a view to implementation, and
- e) Encourage employers to implement initiatives aimed at reducing the gap in retirement savings.

⁴⁶ The relevant recommendations are:

(a) Amend the *Sex Discrimination Act 1984* (Cth) (SDA) to:

- extend the discrimination ground of 'family responsibilities' under the SDA to include indirect discrimination, and
- include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

(b) Strengthen the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) (FWA) by:

- removing the qualification requirements in section 65(2)(a) of the FWA (i.e. the requirements for 12 months continuous service)
- introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.

(c) Clarify the provisions under the National Employment Standards of FWA to:

- allow employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF)
- allow employee breaks from work for the purposes of breastfeeding or expressing.

(d) Increase understanding of legal requirements to not discriminate on the basis of pregnancy and return to work including by:

- developing guidance material for employers in relation to their legal obligations and in relation to the work, health and safety needs or requirements of pregnant employees, employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding). This guidance material should be developed with a view to introducing a 'code of practice' to have effect under Work Health and Safety laws in every jurisdiction.

(e) Allocate funding to conduct a regular national prevalence survey on discrimination related to pregnancy, parental leave and return to work after parental leave (every four years)

- (f) Conduct further research into identified gaps, such as the most effective mechanisms for reducing the vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.

⁴⁷ Dr Derya Iner, *Islamophobia in Australia* (10 July 2017), 5. At: <https://www.isra.org.au/site/user-assets/Islamophobia%20in%20Australia.pdf> (viewed 30 May 2018); Professor Kevin Dunn, Ms Rosalie Atie, Dr Virginia Mapedzahama, Associate Professor Mehmet Ozalp, Dr Adem F. Aydogan, *The resilience and ordinariness of Australian Muslims: Attitudes and experiences of Muslims Report*, (November 2015). At: https://www.westernsydney.edu.au/_data/assets/pdf_file/0008/988793/12441_text_challenging_racism_WEB.pdf (viewed 30 May 2018).

See also: Australian Human Rights Commission, *Isma - Listen: National consultations on eliminating prejudice against Arab and Muslim Australians* (2002), 3. At: <https://www.humanrights.gov.au/our-work/race-discrimination/projects/isma-listen-national-consultations-eliminating-prejudice> (viewed 30 May 2018).

This report found that people readily identifiable as Muslim because of their dress or appearance were particular targets of racist violence and abuse. Muslim women who wear the hijab, niqab or chador have been especially at risk (p3).

Women identified as Muslim by their dress were especially afraid of being abused or attacked in public. Many restricted their movements in public, spending much more time inside their homes (p78).

⁴⁸ Australian Human Rights Commission, *A conversation in gender equality* (March 2017), 18. At: <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/conversation-gender-equality-2017> (viewed 30 May 2018).

⁴⁹ Australian Human Rights Commission, *A conversation in gender equality* (March 2017), 18. At: <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/conversation-gender-equality-2017> (viewed 30 May 2018).

⁵⁰ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2 May 2016). At: <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination> (viewed 30 May 2018).

⁵¹ Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2 May 2016), 11. At: <https://www.humanrights.gov.au/our-work/disability-rights/publications/willing-work-national-inquiry-employment-discrimination> (viewed 30 May 2018).

⁵² Wesley Mission Brisbane and Council of the Ageing (COTA) Queensland, and Urbis 'Doing it Tough' (2015). At: <https://urbis.com.au/insights-news/wesley-mission-report-reveals-queenslands-older-women-poverty-experiences/> (viewed 30 May 2018).

The Age Discrimination Commissioner has identified the issue of homelessness among older women as a key priority, acknowledging that this is a growing issue and one that extends across all socio-economic status groups. See: Dr Kay Patterson, 'Ageing and Advocacy', (Speech delivered at the Annual David Simmons Address, Australian Association of Gerontology and National Ageing Research Institute (31 August 2017). At: <http://www.humanrights.gov.au/news/speeches/annual-david-simmons-address> (viewed 30 May 2018).

⁵³ Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 17 [1.13]. At: <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 30 May 2018).

⁵⁴ Australian Law Reform Commission, *Elder Abuse Discussion Paper*, Discussion Paper No 83 (2016) 22 [1.36], 30 [1.73], 128 [7.6]. At: <https://www.alrc.gov.au/publications/elder-abuse-dp83> (viewed 30 May 2018); Australian Institute of Family Studies, *Elder Abuse: Understanding issues, frameworks and responses*, Research Report No 35 (2016). At: <https://aifs.gov.au/publications/elder-abuse/2-whatelder-abuse> (viewed 30 May 2018).

⁵⁵ The report also provided recommendations in a number of specific areas including aged care, enduring documents, family agreements, superannuation, wills, banking, tribunal appointed guardians and administrators, social security, health and criminal justice responses. See Australian Law Reform Commission, *Elder Abuse – A National Legal Response (Final Report)*, Report No 131 (31 May 2017). At: https://www.alrc.gov.au/sites/default/files/pdfs/publications/elder_abuse_131_final_report_31_may_2017.pdf (viewed 30 May 2018).

⁵⁶ As announced by the Liberal Party of Australia, *The Coalition's Policy to Protect the Rights of Older Australians* (2016). At: www.liberal.org.au/coalitions-policy-protect-rights-older-australians (viewed 30 May 2018).

⁵⁷ Attorney-General's Department, *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* (2014). At <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking.aspx> (viewed 30 May 2018).

⁵⁸ Such as the reforms to the Human Trafficking Visa Framework (2015) and Australia's International Strategy to Combat Human Trafficking and Slavery (2016). This Human Trafficking Visa Framework reforms included: availability for survivors of slavery and slavery-like practices; enabling recipients to maintain their lawful status; waiving the Newly Arrived Resident's Waiting Period (which enables recipients to access English classes, social security payments and other services).

The Commission welcomes the Interdepartmental Committee on Human Trafficking and Slavery. The Interdepartmental Committee comprises of eleven government agencies that provide oversight of Australia's response to human trafficking, including the Attorney-General's Department, Australian Criminal Intelligence Commission, Australian Federal Police, Australian Institute of Criminology, Commonwealth Director of Public Prosecutions, Department of Employment, Department of Foreign Affairs and Trade, Department of Immigration and Border Protection, Department of Social Services, Department of Prime Minister and Cabinet and Fair Work Ombudsman. See Attorney-General's Department, Australian Government, *Australia's response to human trafficking*. At <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (viewed 30 May 2018).

The Commission also commends legislative amendments that strengthen Australia's response to human trafficking, including by recognising various slavery-like practices as offences, which were created through the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth), passed in 2012. The Act amends the *Criminal Code Act 1995* (Cth) to introduce offences of servitude (s 270.5), forced labour (s 270.6A), deceptive recruiting for labour or services (s 270.7), forced marriage (s 270.7B), organ trafficking (s 271.7A – 271.7E), and harbouring a victim (s 271.7F).

We also note the extension of witness protections to victims of trafficking. The *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Cth), extends existing vulnerable witness protections to adult victims of slavery, slavery-like and human trafficking offences, and includes specific protections for witnesses who may be vulnerable due to a particular characteristic such as a disability or their cultural background. The Act also places the burden of proving the defendant was aged 18 or over on the prosecution.

⁵⁹ Australian Human Rights Commission, Submission No 23 to Parliamentary Joint Committee on Law Enforcement, *Inquiry into Human Trafficking* (4 March 2016). At <http://www.humanrights.gov.au/submissions/submission-inquiry-human-trafficking-2016> (viewed 30 May 2018).

⁶⁰ Joy Ngozi Ezeilo, United Nations Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, (2012), UN Doc A/HRC/20/18/Add.1, para 82 (g). At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 30 May 2018); Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking* (2013). At http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees/?url=ifadt/slavery_people_trafficking/report.htm (viewed 30 May 2018).

The Commission also acknowledges the recent parliamentary inquiry and report into the regulatory and legislative aspects of international and domestic surrogacy arrangements, Surrogacy Matters. See: House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Surrogacy Matters* (2016). At http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Inquiry_into_surrogacy/Report (viewed 30 May 2018).

The Committee's 10 recommendations concern improving access to well-regulated and lawful domestic surrogacy arrangements so that there is less need for Australians to travel overseas to engage in surrogacy (Recommendations 1-6), and to promote better protection of the human rights of birth mothers and the children they carry on behalf of Australian citizens involved in international surrogacy arrangements (Recommendations 7-10). If the recommendations are adopted, it will be a step towards more uniform domestic laws that provide increased access to well-regulated surrogacy

arrangements in Australia, and increased scrutiny of the practices in other countries which should lead to better human rights outcomes.

⁶¹ Unregulated surrogacy arrangements can interfere with a surrogate mother's right to bodily integrity and to be free from subjection to cruel, inhuman or degrading treatment or to medical or scientific experimentation without consent. Australian Human Rights Commission, Submission No. 67 to the House of Representatives Standing Committee on Social Policy and Legal Affairs *Inquiry into the Regulatory and Legislative Aspects of International and Domestic Surrogacy Arrangements*, 17 February 2016, 8 [25]-[27]. At <http://www.aph.gov.au/DocumentStore.aspx?id=dedb38e1-e23a-44fb-99be-9f4bea82f9ba&subId=409138> (viewed 30 May 2018).

⁶² Australian Bureau of Statistics, Prisoners in Australia, 2016 (data tables) in Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (18 May 2017) 10. At:

<https://www.hrlc.org.au/reports/2017/5/18/report-over-represented-and-overlooked-the-crisis-of-aboriginal-and-torres-strait-islander-womens-growing-over-imprisonment> (viewed 30 May 2018).

It is also important to note that 80% of Aboriginal and Torres Strait Islander women in prison are mothers: Human Rights Law Centre and Change the Record, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*, (18 May 2017), 5.

At: <https://www.hrlc.org.au/reports/2017/5/18/report-over-represented-and-overlooked-the-crisis-of-aboriginal-and-torres-strait-islander-womens-growing-over-imprisonment> (viewed 30 May 2018).

⁶³ Change the Record, *Blueprint for Change*, Change the Record Steering Committee (2015). At: <https://changetherecord.org.au/policy-framework-blueprint-for-change> (viewed 30 May 2018).

See also Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133) (28 March 2018), Recommendation 16-1. At: <https://www.alrc.gov.au/publications/indigenous-incarceration-report133> (viewed 9 June 2018).

⁶⁴ Australian Institute of Health and Welfare, 'Child protection Australia 2014-15', *Child Welfare Series No. 63* (2016) 48, 53. At: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2014-15/contents/table-of-contents> (viewed 30 May 2018); Australian Institute of Health and Welfare, 'Child protection Australia 2015-2016' *Child Welfare Series No. 66* (2017) 51-52. At: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/contents/table-of-contents> (viewed 30 May 2018).

⁶⁵ Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (17 November 2017). At:

<https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx> (viewed 13 May 2018).

⁶⁶ Victorian Government, *Royal Commission into Family Violence*, Report (2016). At

<http://www.rcfv.com.au/Report-Recommendations> (viewed 30 May 2018); Family Law Council, *Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Terms 1 & 2* (30 June 2015). At:

<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx> (viewed 31 May 2018); Family Law Council, *Interim Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Terms 3, 4 & 5* (30 June 2016).

At:

<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx> (viewed 31 May 2018); Senate Standing Committee on Community Affairs, *Report on the inquiry into out of home care* (19 August 2015). At:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Report (viewed 31 May 2018); Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* (28 February 2015). At: <https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report> (viewed 31 May 2018).

⁶⁷ Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (15 December 2017). At: <https://www.childabuseroyalcommission.gov.au/final-report> (viewed 13 May 2018).

⁶⁸ Australian Human Rights Commission, *Social Justice and Native Title Report 2015*, 48-61. At: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-1> (viewed 30 May 2018). Australian Human Rights Commission, *Social Justice and Native Title Report 2016*, 70-98. At:

<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-2> (viewed 30 May 2018).

⁶⁹ Australian Government Department of Social Services, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017), 36. At: <https://www.dss.gov.au/families-and-children/programs-services/welfare-quarantining/cashless-debit-card-trial-evaluation-reports> (viewed 30 May 2018); Australian Government Department of Social Services, *Cashless Debit Card Trial Evaluation: Final Evaluation Report* (August 2017), 281, 287. At: <https://www.dss.gov.au/families-and-children/programs-services/welfare-quarantining/cashless-debit-card-trial-evaluation-reports> (viewed 30 May 2018).

⁷⁰ See for example: K Jordan and L Fowkes for the Australian National University Centre for Aboriginal Economic Policy Research, 'Job Creation and Income Support in Remote Indigenous Australia: Moving forward with a better system', *CAEPR Topical Issue No. 2/2016* (November 2016). At: http://caepr.cass.anu.edu.au/sites/default/files/docs/CAEPR_Topical_Issues_2_2016_0.pdf (viewed 23 May 2018).

⁷¹ Australian Human Rights Commission, *Submission to the Discussion Paper: Remote Employment and Participation* (9 February 2018). At: <https://pmc.gov.au/indigenous-affairs/employment/community-development-programme-cdp/remote-employment-and-participation-discussion-paper-submissions> (viewed 18 May 2018).

The Commission's submission to the Department of Prime Minister and Cabinet in relation to the Discussion Paper on remote employment and participation, in which it was recommended that a new CDP model:

- Apply a human rights based approach (with a particular focus on the United Nations Declaration on the Rights of Indigenous Peoples).
- Reflect active consideration to the proposal of the Aboriginal Peak Organisations Northern Territory.
- Support Aboriginal and Torres Strait Islander community-led and controlled approaches, including the nature of approved work activities, in a manner consistent with Aboriginal and Torres Strait Islander people's right to self-determination and the principle of free, prior and informed consent.
- Be informed by local and Indigenous knowledge and experiences about the needs and aspirations of Aboriginal and Torres Strait Islander peoples and their communities.
- Ensure that participation in work activities is compensated through wages, which are set at least at the national minimum wage.
- Ensure that the mutual obligation activities and penalties are no more onerous for CDP participants than those participants on income support in non-remote locations.
- Remove the financial disincentive for providers to exercise their discretion in cases of non-compliance with attendance requirements.

The Australian Government announced changes to the CDP in its 2018-2019 Federal Budget. However, a number of the concerns previously raised by the Commission and other stakeholders still stand, such as the penalty system. See: Human Rights Law Centre, 'Discriminatory remote work scheme improved but onerous work hours and harsh penalties will drive poverty' (Media Release, 11 May 2018). At: <https://www.hrlc.org.au/news/2018/5/10/discriminatory-remote-work-scheme-improved-but-work-hours-will-drive-poverty> (viewed 22 May 2018); and National Congress of Australia's First Peoples, 'First Peoples sacrificed in the name of Budget Surplus' (Media Release, 9 May 2018). At: <https://nationalcongress.com.au/wp-content/uploads/2018/05/National-Congress-Budget-Response-2018-8th-May-2018.pdf> (viewed 22 May 2018).

The Commission commends:

- The reduction in income reporting requirements to Centrelink for those job seekers who have mutual obligation requirements of between zero and 14 hours per week.
- The Government's assurance that job seekers will not be required to participate beyond their capacity through an improved assessment process that will clearly identify any barriers to employment they have.
- The Government's initiative to support 6,000 subsidised jobs for CDP participants which will provide job-holders with wages at minimum wage or above and access to superannuation and other work place entitlements.

The Commission stands by the recommendations made in its submission to the Department of Prime Minister and Cabinet in relation to the Discussion Paper on remote employment and participation in which the Commission recommended a wage-based model. The Commission is therefore of the view

that the wage-based component of the reformed CDP, currently limited to 6,000 jobs, should be expanded as a universal approach.

⁷² These include: provisions of the Migration Act 1958 (Cth) which permit visa cancellation on broad character grounds, including in cases where people have family links in Australia; restrictions on access to family reunion opportunities for some humanitarian entrants; immigration detention arrangements which lead to family separation; and the practice of transferring people from regional processing countries to Australia for medical treatment without their families. See Australian Human Rights Commission, *Human rights issues raised by visa refusal or cancellation under section 501 of the Migration Act* (June 2013) 17–18. At http://www.humanrights.gov.au/sites/default/files/document/publication/section_501_paper.pdf (viewed 30 May 2018); see also Australian Human Rights Commission, Submission No 8 to the Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into the Migration Amendment (Character and General Visa Cancellation) Bill 2014* (28 October 2014); Australian Human Rights Commission, *Asylum seekers, refugees and human rights: Snapshot report (2nd edition)* (2017) 45–46. At http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_Snapshot%20report_2nd%20edition_2017_WEB.pdf (viewed 30 May 2018); see, for example, Helen Davidson and Paul Farrell, 'Immigration stalled on requests for rape victim's family to join her, Nauru files show', *The Guardian* (online) (13 August 2016). At <https://www.theguardian.com/australia-news/2016/aug/13/immigration-stalled-on-requests-for-victims-family-to-join-her-nauru-files-show> (viewed 30 May 2018).

⁷³ See United Nations High Commissioner for Refugees, *UNHCR Mission to the Republic of Nauru, 3-5 December 2012* (2012). At <http://www.refworld.org/docid/50cb24912.html> (viewed 17 May 2018); Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of the Migration (Regional Processing) package of legislation* (19 June 2013). At http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2013/2013/92013/~media/Committees/Senate/committee/humanrights_ctte/reports/2013/9_2013/pdf/report.ashx (viewed 17 May 2018); United Nations High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru, 7 to 9 October 2013* (2013). At <http://www.unhcr.org/en-au/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html> (viewed 17 May 2018); United Nations Committee against Torture, *Concluding observations on the combined fourth and fifth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014) 6; Philip Moss, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (Department of Immigration and Border Protection, 6 February 2015). At <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf> (viewed 17 May 2018); Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, Parliament of Australia, *Taking responsibility: Conditions and circumstances at Australia's Regional Processing Centre in Nauru* (August 2015) 59–86. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/~media/Committees/nauru_ctte/Final_Report/report.pdf (viewed 17 May 2018); Elizabeth Elliott and Hasantha Gunasekera, *The health and well-being of children in immigration detention: Report to the Australian Human Rights Commission – Monitoring Visit to Wickham Point Detention Centre, Darwin, NT* (Australian Human Rights Commission, 2016) 12. At <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/health-and-well-being-children-immigration> (viewed 17 May 2018).

⁷⁴ See, for example, Michael Edwards, 'Tensions on Nauru heightened after series of attacks on refugees by locals', *ABC News* (online) 20 March 2015. At <http://www.abc.net.au/news/2015-03-20/tensions-high-on-nauru-after-attacks-on-refugees/6334234> (viewed 17 May 2018); Hayden Cooper, 'Raped on Nauru: Video captures moment Somali refugee pleads for help from police after alleged sexual assault', *ABC News* (online) 28 September 2015. At <http://www.abc.net.au/news/2015-09-28/two-refugees-allegedly-raped-on-nauru/6809956> (viewed 17 May 2018); Ginny Stein, 'Nauru rape case: Police "stopped off to watch firework show" before ferrying Iranian asylum seeker to station', *ABC News* (online) 22 October 2015. At <http://www.abc.net.au/news/2015-10-21/alleged-shortfalls-in-treatment-of-nauru-rape-victim/6872582> (viewed 17 May 2018).

⁷⁵ Australian Human Rights Commission, *Submission under the Universal Periodic Review Process: Australia's Second Universal Periodic Review* (2015), 18. At <https://www.humanrights.gov.au/submissions/australia-s-second-universal-periodic-review> (viewed 31 May 2018).

⁷⁶ Specifically, the Commission has made the following recommendations in its [submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017):

- g) Actions supporting the reduction of gender segregation in Australian workplaces should be included as a priority in the forthcoming 2018-19 Implementation Plan for the Government Women's Workforce Strategy.
- h) The Commonwealth Government should develop and commit to a strategy for becoming a model 'industry' in reducing gender segregation:
 - i. as an employer (roles and occupations, management levels, flexibility, parental leave arrangements/inducements for men etc)
 - ii. in policy and program design/development, and
 - iii. when contracting (impose contractual terms requiring demonstrated efforts to improve gender balance to 40-40-20 in organisations engaged by Government.)
- i) The Government should fund a quantitative and qualitative study into the features of male and female-dominated workplaces industries and barriers to employees entering non-traditional fields. The study should build on the data held by the Workplace Gender Equality Agency, and of the relevant inquiries and reports previously conducted by the AHRC.
- j) Based on this study, a report should be prepared for Parliament, including:
 - i. proposed guidelines on the use of special measures to reduce gender segregation (i.e. using special measures to support women in male dominated and men in female dominated workplaces, including in non-paid caring roles), and
 - ii. options for facilitating relationships between employers and women's networks to workshop solutions to segregation in male dominated industries, and similar with male workers in female dominated industries.
- k) Research should be conducted on whether there is higher prevalence of sexual harassment/sex discrimination in gender segregated workplaces, and if so, recommendations for change, noting that, as a first step, the Commission's 2017 workplace sexual harassment prevalence survey, to be conducted mid-year, can examine this issue.
- l) The Department of Foreign Affairs and Trade should partner with the Commission to consult internationally on special measures to reduce workplace gender segregation, focusing on States comparable to Australia in this context.

⁷⁷ The Commission draws the Committee's attention to recommendations made in the following submissions and reports, insofar as they remain relevant to addressing women's economic security, including in retirement:

[Submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave](#) (24 November 2008).

[Investing in care: Recognising and valuing those who care](#) (2013).

[Supporting Working Parents: Pregnancy and Return to Work National Review Report](#) (2014), and the relevant recommendations directed at government.

[Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability](#) (2015).

[Submission to the Senate inquiry into the economic security for women in retirement](#) (2015).

[Submission to the Finance and Public Administration References Committee inquiry into gender segregation in the workplace and its impact on women's economic equality](#) (2017).

The Commission also recommends the following reforms to the superannuation system:

- f) Removal of the \$450 superannuation guarantee threshold,
- g) Payment of a superannuation contribution on parental leave, family care leave and workers compensation,
- h) The Low Income Superannuation Contribution be extended permanently,
- i) The payment of superannuation on carer payments is costed with a view to implementation, and
- j) Encourage employers to implement initiatives aimed at reducing the gap in retirement savings.

⁷⁸ The relevant recommendations are:

- (g) Amend the *Sex Discrimination Act 1984* (Cth) (SDA) to:
 - extend the discrimination ground of 'family responsibilities' under the SDA to include indirect discrimination, and
 - include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.
- (h) Strengthen the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) (FWA) by:

- removing the qualification requirements in section 65(2)(a) of the FWA (i.e. the requirements for 12 months continuous service)
- introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.
- (i) Clarify the provisions under the National Employment Standards of FWA to:
 - allow employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF)
 - allow employee breaks from work for the purposes of breastfeeding or expressing.
- (j) Increase understanding of legal requirements to not discriminate on the basis of pregnancy and return to work including by:
 - developing guidance material for employers in relation to their legal obligations and in relation to the work, health and safety needs or requirements of pregnant employees, employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding). This guidance material should be developed with a view to introducing a 'code of practice' to have effect under Work Health and Safety laws in every jurisdiction.
- (k) Allocate funding to conduct a regular national prevalence survey on discrimination related to pregnancy, parental leave and return to work after parental leave (every four years)
- (l) Conduct further research into identified gaps, such as the most effective mechanisms for reducing the vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.