

AUSTRALIA'S HUMAN RIGHTS FRAMEWORK REVIEW SUBMISSION

30 June 2023

WOMEN'S RIGHTS NETWORK AUSTRALIA

Women's Rights Network Australia (WRNA) is a non-partisan organisation founded in 2023 by mothers, teachers, lawyers, scientists, academics, researchers, professionals, lesbians, retirees, and others who found themselves increasingly frustrated that our institutions have embraced gender ideology in the absence of evidence, without consultation and without due democratic process. Our aim is to work at the grassroots level to retain the hard-won rights of women and girls, including our right to single-sex spaces such as in prisons, hospital wards and health care, changing rooms and toilets. We also want to stop the medicalisation and indoctrination of children who are encouraged to believe that it is possible to change sex. We are non-partisan, because we believe that women from all political tendencies need their sex based rights protected in law and policy. We are also secular and advocate for evidence-based policies. We aim to empower women who are new to organising.

WRNA supports the development of a federal Human Rights Act as it represents the best opportunity for Australia to uphold the rights of women, including to live free from discrimination, from violence and threats of violence, as well as the rights of children to the highest attainable standard of health.

THE HUMAN RIGHTS OF WOMEN

Australian and international law has long recognised the rights of women, including through the Convention for the Elimination of Discrimination Against Women (CEDAW), which Australia ratified through the *Sex Discrimination Act 1984* (Cmth). CEDAW reinforces the rights and freedoms women possess by virtue of being human, including the right to security of person, the right to live free from inhuman or degrading treatment or punishment, the rights to freedom of expression and association.¹ It also calls on states to eliminate all forms of discrimination that women face, including as a result of violence and the threat of violence,² as well as provide for special measures to ensure access for women to health care³ and justice.⁴

NEW FORMS OF DISCRIMINATION IN AUSTRALIA

WRNA submits that the introduction of 'gender identity' in law and policy without adequate safeguards to uphold the pre-existing universal rights of women and girls is creating new forms of discrimination and incursions on the rights to safety, security and dignity and freedoms of speech, conscience and belief for women and girls.

We anticipate that some will characterise our position – intentionally or otherwise – as 'anti-trans'. We categorically reject that characterisation. Our starting point is that sexual violence and sexual

¹United Nations, [Convention for the Elimination of Discrimination Against Women](#) (1981) (CEDAW).

²United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence Against Women, updating General Recommendation No. 19* ([CEDAW/C/GC/35](#)) (26 July 2017).

³CEDAW, Article 12.

⁴CEDAW, United Nations Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 33 on Women's Access to Justice* ([CEDAW/C/GC/33](#)) (3 August 2015).

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harassment is a reality with which women and girls have had to contend since time immemorial. Progressive laws and social norms have delivered varying degrees of protection. But we would be naïve to believe that women and girls have escaped the reality of male-patterned violence and that we can afford to break down the sex-based distinction between 'male' and 'female' in all dimensions of our lives. We welcome policies that lessen stigma and prejudice for *all* people and are sympathetic to the needs of law-abiding men who do not manifest traditional male stereotypes. But these men, whatever their intentions, do not account for *all* men who seek to access female spaces and sex-based distinctions remain critical to the maintenance of our human rights.

Evidence and Data

WRNA is concerned that Australia is faltering in gathering the essential data required to analyse the reality of human rights of women and girls, particularly regarding female vulnerability to male sexual violence.

Inadequate data makes the legal protection of women, as an oppressed class of person, difficult to prosecute as it obfuscates the necessity for single-sex spaces and services, and denies the reality that female vulnerability is the result of the sexed bodies of women and girls.

Accurate data collection and research confirm that women account - by an overwhelming majority - for the victims of sexual crime but recent data raises questions about the perpetrators of sexual offences.

ABS data for 2021-2022 for example showed a 38% increase in the rate of 'female' sexual assault and related offences. Of course because sexual offenders are overwhelmingly male, a trend that holds across countries and cultures, and those offended against are overwhelmingly female, a small number of cases can skew these data. But inquiries with the ABS have not been able to confirm that the sex-disaggregated data necessary for analysis exists⁵. At the same time we note media reporting based on police sources in some states suggests that authorities are no longer maintaining sex-based distinctions.⁶ The CEDAW Committee in its General Recommendation 35 underlines the importance of collecting data.⁷ Separately, CEDAW notes

*sex-disaggregated data ... is cross-classified by sex, presenting information separately for men and women, boys and girls. Sex-disaggregated data reflect roles, real situations, general conditions of women and men, girls and boys in every aspect of society ... When data is not disaggregated by sex, it is more difficult to identify real and potential inequalities.*⁸

WRNA respectfully requests this committee to review - or recommend a review of - relevant practices and guidelines for data collection and analysis; an indispensable requirement for monitoring and protecting human rights. (We note that this would also be in line with the Commonwealth's 2009 guidelines, *Australian government guidelines on the recognition of sex and gender*.⁹)

⁵Private correspondence with ABS.

⁶Catie McLeod, 'NSW serial killer Regina Kaye Arthurell arrested after alleged sexual crime', [News.com.au](https://www.news.com.au) (online, 28 January 2022).

⁷United Nations, Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19* (26, July 2017) ([CEDAW/C/GC/35](https://www.cedaw.org/C/GC/35)).

⁸[UN Women Glossary](https://www.un.org/en/development/desa/population/publications/glossary/). Glossary cites definitions from UNICEF, UNFPA, UNDP, UN Women, 'Gender Equality, UN Coherence and You', UNESCO (2003) Gender Mainstreaming Implementation Framework.

⁹Attorney General, [Australian Government Guidelines on the Recognition of Sex and Gender](https://www.austlii.edu.au/au/other/dfat/special/guidelines/guidelines.html) (online, July 2013).

The Loss of Female-Only Spaces

WRNA is concerned that a new form of discrimination is occurring when organisations and institutions prioritise the protection of 'gender identity' over sex where the safety and dignity of women and girls is at risk, or the right of women to associate freely is restrained.

We are concerned by the extent and scope of regulations and instructions in prison administration at the state and territory level prioritising 'gender identity' over sex in the accommodation of prisoners.¹⁰ We note concerns raised by women in a Victorian prison about the incarceration there of an individual with a history of sexual offences against women¹¹ and we suspect this occurrence is more common. WRNA also submits that a trend away from providing single-sex domestic violence and rape crisis services is impacting the right of vulnerable women to protection in our community. We are concerned that the trend to providing unisex toilets is weakening social safeguards that protect, especially girls, from sexual harassment, voyeurism and exposure.¹² Our members have raised these concerns, including to providers and state-based authorities, and we have been told that it's our concerns, and not the problem, that is problematic. We note education department guidelines similarly instruct schools to address safeguarding concerns through 'learning'¹³.

WRNA is concerned about the trend towards de-gendered language in health care, such as 'pregnant people' and 'chest-feeders'.¹⁴ We note compelling arguments that degendered language confuses messaging especially for migrant and refugee women, so that our institutions are not adequately meeting their needs.¹⁵ We are concerned about policies in hospitals and other settings that impact privacy for women including the directives that patient accommodation is to be determined by 'gender', defined as 'one's sense of whether they are a man, woman, non-binary, a gender, gender queer, gender fluid, or a combination of one or more of these definitions'.¹⁶ We need to understand the impact of such directives on religious, migrant and refugee women, among others.

WRNA is concerned that exclusive meetings of women are now prohibited by state government agencies exercising anti-discriminatory statutory powers. This is especially impacting lesbians. The Anti-Discrimination Tribunal in Tasmania denied an exemption (from unlawful discrimination) application for a lesbian-only event on the basis the event would discriminate against 'types of bodies'.¹⁷ Other lesbians report that as a result of harassment and court challenges, they have had to 'go underground' to organise their events.¹⁸

¹⁰ For example, Corrective Services NSW, [Inmate Classification and Placement of Transgender and Intersex Inmates](#) (online, 2 February 2021).

¹¹ Anon, 'Prisoners At Victorian Women's Jail Launch Petition Over Transgender Inmate', [Herald Sun](#) (online, 12 August 2022).

¹² For example, see websites in Australia and overseas that have sought to collate anecdotal evidence regarding the impact of 'gender identity' in women's single-sex spaces. See, for example [No Conflict They Said](#) and [This Never Happens](#).

¹³ NSW Education, 'Transgender Students in Schools' [Legal Issues Bulletins](#) (online, August 2022) notes the concerns of other students regarding lack of same sex provision are not supported outside of education to make them accept the policy, 'If other students indicate discomfort with sharing single-sex facilities (toilets or change rooms for example) with a student who identifies as transgender, this should be addressed through the school learning and support team'.

¹⁴ Wendy Tuhouy, 'Inclusive language risks 'dehumanising women', top researchers argue', [The Sydney Morning Herald](#) (online, 29 January 2022).

¹⁵ Gribble KD, Bewley S, Bartick MC, Mathisen R, Walker S, Gamble J, Bergman NJ, Gupta A, Hocking JJ and Dahlen HG, (2022). Effective Communication About Pregnancy, Birth, Lactation, Breastfeeding and Newborn Care: The Importance of Sexed Language. *Front. Glob. Womens Health* 3:818856. doi: [10.3389/fgwh.2022.818856](#).

¹⁶ NSW Health, [Same Gender Policy Directive](#) (online, September 2022).

¹⁷ *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption)* [2022] TASCAT 142 where the decision of the Commissioner to refuse the applicants' application for an exemption pursuant to s 56 of the *Anti-Discrimination Act 1998* (TAS) was confirmed on appeal.

¹⁸ See, for example, the anonymous reports by Australian lesbians on the [No Conflict They Said](#) (website, accessed 26 June 2023).

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WRNA is concerned that women and girls are being discouraged to participate in competitive sport by the failure of our national sporting bodies to uphold the right to single sex sports where male strength and stamina are at issue.¹⁹ Our members are particularly concerned that recent guidance provided by the Australian Institute of Sport (AIS) unfairly privileges protecting male-born people ahead of discrimination against women and girls.²⁰ The AIS advice is also contrary to that of international sporting bodies (including the International Olympic Committee, World Athletics and World Aquatics).²¹ We are concerned by the reality that biological men are winning women's professional competitions,²² an outcome which we believe discourages women and girls' participation in competitive sport.

WRNA is concerned that women are being discouraged to celebrate their special achievements including, for example, in the music industry²³. As a matter of principle, WRNA supports 'de-gendering' categories and language to address societal stereotypes, especially when language implies women should not occupy positions of authority (such as the titles 'sportsman' or 'chairman'). But the wholesale removal of women's categories fails to recognise the purpose of specific special measures to provide equality of *opportunity*. We are also concerned that including men in awards for women downplay our particular struggles and achievements.²⁴

The Loss of Our Freedoms of Speech, Conscience and Belief

WRNA is concerned that these new forms of discrimination are impacting women's rights to freedom of speech, conscience and belief, for women who express 'gender critical'²⁵ views. Women have been deplatformed²⁶, lost their jobs²⁷, or their philanthropic positions²⁸, and investigated and fined for expressing gender critical views²⁹. Others have lost their positions within or dismissed from political

¹⁹*Sex Discrimination Act 1984* (Cmth) s 42(1). This accords with CEDAW's imperative to ensure women and girls have the same opportunities to participate in sports (CEDAW Article 10 (g)).

²⁰Australian Institute of Sport, [Transgender and Gender Diverse Inclusion Guidelines for High Performance Sport](#) (May 2023).

²¹Darren Kane, 'Australian sport's transgender policy is still as clear as mud', [The Sydney Morning Herald](#) (online, 23 June 2023).

²²Elliot Health, 'Breanna Gill causes transgender debate after winning an Australian Women's Tour', [Golf Monthly](#) (online, 4 April 2023); Ollie Lewis, 'Aussie trans surfer makes history by winning title as a woman three years after taking out the same competition as a man', [Daily Mail](#) (online, 20 May 2022). See, also, Shay Woulahan, 'Thousands of complaints filed after trans Youtuber allowed to play on women's football league reportedly injured players', [Reduxx](#) (online, 1 April 2023).

²³Biwa Kwan, 'This year's ARIA awards will have gender neutral prizes', [SBS](#) (online, 15 September 2021). In 2022, only 3 of the 10 nominees were women and a man won. Only one group in the nominees for Best Group and Album of the Year included a woman.

²⁴Clarrissa Bye, 'Trans women allowed to enter NSW Woman of the Year awards', [Daily Telegraph](#) (online, 8 September 2021).

²⁵Australian Journalist, Edie Wyatt explains, '*Gender critical people accept the existence of gender identity as a legal fiction to protect transgender-identified people and as a psychological category, but they reject the philosophical definition as 'gender identity' as a type of soul that everyone has. Gender-critical people especially reject that we should teach children that sexed-bodies should be medicalised to conform to gender stereotypes. They usually advocate that biological sex should be given priority and protection in law, especially in regard to the protection of women and children.*' See, Edie Wyatt, 'Gender-Critical Tasmanian women are given permission to speak', [Spectator](#) (online, 16 December 2021).

²⁶See Jewel Topsfield, 'We apologise for any hurt': Readings regrets 2018 event with feminist author Julie Bindel', [The Age](#) (online, 10 February, 2021).

²⁷Frank Chung, 'Cancel culture': Girl Guides CEO sacked over transgender tweet', [Daily Telegraph](#) (online, 16 February 2022).

²⁸Tita Smith, 'Mum-of-three is 'sacked' from breastfeeding counsellor job for saying the word 'MOTHER' instead of 'parent' because of rise of transgender men breastfeeding their babies', [Daily Mail](#) (online, 12 May 2022).

²⁹*Rep v Clinch (Appeal)* [2021] [ACAT](#) 106 (3 November 2021). See, also, Anon, 'ACAT decision finds debate on the nature of transwomen is in the public interest', [Women's Forum Australia](#) (online, 17 December 2021).

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parties³⁰, or felt compelled to resign for their views³¹. A senior academic has been the subject of multiple investigations³² and menacing student protests³³; a senior journalist recently lost her job for reporting on gender issues and published her experiences about 'trans censorship'³⁴; a senior doctor was stood down after questioning gender medicine³⁵; an artist was expelled from an arts festival³⁶; an animal welfare volunteer was expelled from her charity³⁷ for attending a women's rights event; a city councilor is facing 'hate speech' investigations for speaking at such an event³⁸. An organiser of a women's rights rally alleges she has been repeatedly defamed by leaders of state political parties in Victoria because she is gender critical.³⁹ A breastfeeding advocate was censored for questioning the ethics of a biological male attempting to breastfeed a newborn baby.⁴⁰

Australian cases regarding an employee's right to maintain gender critical beliefs are still on foot. Relevant cases⁴¹ overseas have confirmed that gender critical thoughts and beliefs are protected and not discriminatory. Many people hold gender critical thoughts and beliefs. The broader Australian rights framework with its express right to freedom from state-sanctioned religion⁴² and the implied constitutional right of political communication⁴³ are, however, failing to satisfactorily protect women and girls. Access to justice for effective remedies is overwhelmingly prohibitive and these costs are expediting and camouflaging our loss of rights. The United Nations Special Rapporteur on violence

³⁰Wendy Tuohy, 'Greens dump new convenor over trans comments', [The Sydney Morning Herald](#) (online, 18 June 2022); Anon, 'Ousted Victorian MP Moira Deeming says she will never quit or resign from Liberal Party', [ABC](#) (online, 14 May 2023).

³¹Jule Cross, 'Transgender Animal Justice Party candidates resign in row over women's rights', [Daily Telegraph](#) (online, 12 May 2022); Anon, 'Animal Justice Party parts ways with candidates over transgender views', [Out in Perth](#) (online, 13 May 2022).

³²Following the establishment of a [website](#) for women to report impacts of men using women-only spaces, the academic faced criticism and workplace investigations. See, Karl Quinn, "'Transphobic' website puts Melbourne University academics at odds', [The Sydney Morning Herald](#) (online, 25 February 2021); Zac Crelin, 'Over 1,000 uni students and staff have condemned a 'transphobic' site made by a UniMelb academic', [Pedestrian](#) (online, 28 February 2021). Following the academic's involvement in a women's rights rally on 18 March 2023, activists mounted a campaign against her and her feminism students at the university campus. The academic lodged a claim with WorkSafe, see Chip Le Grand, 'Target of trans rights campaign lodges claim against University of Melbourne', [The Sydney Morning Herald](#) (online, 14 May 2023) after the university found no case to answer in their investigation. See, also Chip Le Grand, 'University closes book on lecturer transphobia complaints', [The Sydney Morning Herald](#) (online, 21 May 2023). See also the academic's self-published '[censorship timeline](#)'.

³³Chip Le Grand, 'Class warfare: Lecturer targeted by trans activists over rally role', [The Age](#) (online, 14 May 2023); Rosemary Neill, 'Uni of Melbourne VC slams balaclava-wearing transgender activists over campus vandalism', [The Australian](#) (online, 23 June 2023); Holly Lawford-Smith, 'Why I'll continue to fight against the trans heterodoxy on campus', [The Australian](#) (online, 27 July 2023).

³⁴Julie Szego, 'I was sacked for writing about gender', [Unherd](#) (online, 19 June 2023).

³⁵Natasha Robinson, 'Senior Psychiatrist Stood Down after questioning gender medicine', [The Australian](#) (online, 9 June 2023).

³⁶Pearl Moon, 'Expelled from Australian Wearable Art', [Pearl Red Moon](#) (online, 5 June 2023).

³⁷Personal account of Juanita Morgan, speaker at a 'Let Women Speak' women's rights rally on 18 March 2023. See, Angie Jones, 'Juanita talks to Angie about how attending Let Women Speak Melbourne has turned her life upside down', [YouTube](#) (online, 1 April 2023).

³⁸Counsellor to face Tasmanian Anti-Discrimination Commissioner for 'inciting hatred' when she stated 'Transwomen are men' at a 'Let Women Speak' women's rights rally on 22 March 2023. See Judy Augustine, 'Louise Elliot to face anti-discrimination commissioner over transgender comments', [The Mercury](#) (online, 12 May 2023). See also, Cllr Louise Elliott's [Twitter](#).

³⁹Angie Jones, Terf Talk Down Under, 'Associate Prof Nick Osbaldiston talks to Angie about gender ideologues influence on academic freedom', [You Tube](#) (online, 21 April 2023) at 36:00 minutes.

⁴⁰Rowan Dean, 'Orwellian': Tweets banned for saying only women can breastfeed', [Sky News](#) (online, 4 June 2023).

⁴¹*Allison Bailey v Stonewall Equality Ltd, Garden Court Chambers Ltd, Rajiv Menon QC and Stephanie Harrison QC* (Case No: [202172/2020](#)); *Forstater v CGD Europe & Ors* [2022] ICR 1, [2021] IRLR 706, [2021] UKEAT [0105_20_1006](#).

⁴²The Constitution of Australia s 116, provides '*The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion (...)*'.

⁴³The High Court has determined the executive and legislative branches of government cannot infringe upon Australian citizens freedom to discuss government, its institutions and political matters. See *Nationwide News Pty Limited v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Limited and Others and the State of NSW v. The Commonwealth of Australia and Another* (1992) 177 CLR 106.

against women and girls has expressed concerns about 'the decreasing space' available for women and women's organisations to advocate for their rights in the Global North.⁴⁴

THE HUMAN RIGHTS OF CHILDREN

The Convention on the Rights of the Child (CRC) which Australia signed in 1990 and ratified in 1991, but is yet to incorporate in domestic legislation, reinforces the fundamental human rights of children to protections from mistreatment and discrimination. It also obliges states parties to act in the best interest of the child in all actions concerning them, including their health, noting that by reason of their 'physical and mental immaturity' the child 'needs special safeguards and care'.⁴⁵

The application of 'gender identity' concepts to healthcare, and specifically the 'affirmation model' of care for children and young people suffering gender dysphoria, would appear however to infringe the rights of Australian children. The model holds that the scientific basis for gender medicine, including the provision of puberty blockers and cross sex hormones, is settled and dismisses alternative treatments, including exploratory psychotherapy. Healthcare workers, teachers, parents and others must 'affirm' a child's declaration of a trans identity regardless of their age or mental health, while legislation in the Australian Capital Territory, Queensland and Victoria specifically prohibits alternative treatment approaches. New South Wales, Western Australia and Tasmania are planning similar legislation. Other state and territory legislation allows children to change their legal sex or gender.⁴⁶

But despite the claims of industry advocates and others, the evidence base for affirmative care is far from settled and in fact studies overseas and in Australia show that puberty blockers can adversely impact a child's development,⁴⁷ including their skeletal health and neurodevelopment and that most children who start on puberty blockers go on to cross sex hormones which can impair their future sexual functioning and irreversibly impact fertility. Researchers have also demonstrated a high incidence in presentations to gender clinics of children suffering co-morbidities, such as autism or anxiety. There is also a high risk of overdiagnosis and that young people can mistake their same-sex attraction for a transgender identity. It is sometimes claimed that affirmative care 'saves lives' because transgender or dysphoric children are often depressed. However, the claim that affirmation through social and hormonal interventions improves mental wellbeing is also highly contested and some studies suggest the opposite.⁴⁸

The absence of a strong evidence base for the benefits of the affirmation model, including the use of drugs which have not received formal approval, along with known adverse risks associated with their use, raises serious questions about Australia's commitment to protect Australian children from injury

⁴⁴Reem Asalem, [Statement](#) (online, 24 May 2023) states '*Discrimination based on sex and sexual orientation is prohibited in international law and regional human rights law...I am concerned about the decreasing space available for women and women's organizations to organize and/or express their opinion peacefully in several countries in the Global North. Women coming together to demand the respect for their needs based on their sex and/or sexual orientation have been threatened, attacked, and vilified...I am disturbed by the frequent tactic of smear campaigns against women, girls and their allies on the basis of their beliefs on non-discrimination based on sex and same-sex relations. Branding them as 'Nazis', 'genocidaires' or 'extremists' is a means of attack and intimidation with the purpose of deterring women from speaking and expressing their views ... I would like to emphasize that the rights to free expression and peaceful assembly are crucial to ensuring that societies can develop their priorities and policies democratically and balance the rights of diverse groups in a pluralistic society. Attempts to silence women based on the views they hold regarding the scope of gender identity and sex in law and in practice and the rights associated with these, severely affects their participation in society in dignity and in safety, as well as their country's prosperity and development.*'

⁴⁵United Nations, [Convention on the Rights of the Child](#), (1990).

⁴⁶Belle Lane, '[Gender questioning children and family law: an evolving landscape. Paper for the Australian Family Law profession](#)' (April 2023). Lane outlines the research for and against the affirmation model.

⁴⁷Ibid 46, p 59.

⁴⁸Ibid 46, pp 33 and 58.

and negligent treatment⁴⁹ and to provide them with the highest attainable standard of health⁵⁰. The unproven and highly questionable narrative that transgender or gender dysphoric children are at elevated risk of suicide if they are not affirmed also compromises their capacity to provide informed consent. As such, it potentially breaches their right to protection from medical experimentation 'without consent freely given'⁵¹ as well as their parents' rights under the Convention⁵². We note the World Health Organisation advises that suicide is rarely if ever caused by a single factor and that self-harm and suicide ideation are known to be contagious.⁵³

A FEDERAL HUMAN RIGHTS ACT

WRNA supports the key elements in the Australian Human Rights Commission proposal for such an Act: a positive duty on public authorities to consider the impact of law and policy on *all* impacted groups; participatory rights and duties to allow all voices to be heard; and a limitations clause to ensure balance in the development and implementation of human rights.

Positive Duty

WRNA agrees it is imperative the Executive act compatibly with human rights when developing laws and policies for Australians. This duty should extend to all our existing obligations even when we are yet to incorporate them into Australian law.⁵⁴

As it pertains to CEDAW we submit that the *Sex Discrimination Act 1984* (Cmth), which was enacted to incorporate our obligations under CEDAW, must be reviewed to ensure it still adequately protects the rights of women and girls including from violence - the most destructive and damaging form of discrimination against women. We've raised concerns about data collection and the need for sex-based language to be used to ensure accurate monitoring and data capture. The Commonwealth needs to ensure *sex-disaggregated data* is collected and used to uphold CEDAW principles to achieve fair outcomes for women and girls.

A positive duty needs also to extend to the elimination of sex-based stereotypes as set out in CEDAW⁵⁵. WRNA is especially concerned that education regarding 'gender identity' is re-introducing these stereotypes under the guise of gender expression; that is, the way people may choose to dress or their mannerisms. Our concern is that pressure to conform with gender stereotypes is driving young people to deny their sexed bodies and affirm themselves socially and medically as possessing a 'gender identity'. We should celebrate non-conformity in dress and mannerisms, but counter any suggestion that modifying one's bodily appearance by medical, surgical or other means, to conform to a physical stereotype is necessary to live an authentic life.

Participatory Rights and Duties

The proposed human rights framework includes an express duty on public authorities and parliament to consult with groups impacted by policy decisions. WRNA argues women, as a group, should be explicitly included in any proposed Participatory Duty and that special attention needs to be given to

⁴⁹CRC, Article 19.

⁵⁰CRC, Article 24.

⁵¹ICCPR, Article 7.

⁵²CRC, Article 5.

⁵³World Health Organisation, [Preventing suicide: a resource for media professionals](#) (online, 2017).

⁵⁴ICCPR, CAT, and UNCRC.

⁵⁵CEDAW, Articles 5 and 10.

engage the views of vulnerable women, including women in prison, in domestic violence shelters, Indigenous, migrant and refugee women, as well as older women, disabled women and same-sex attracted women. It will be especially important at this time for relevant public authorities to invite the views of women in sporting clubs across Australia before changing existing rules regarding participation.

WRNA would also like to see a participatory duty extended to remedy failures to adequately engage women in the past. WRNA believes the documentation, presentation and the parliamentary debates before the 2013 amendments to the *Sex Discrimination Act 1984* (Cmth) did not adequately address the implications of the amendments for women, in part because the drafters did not themselves understand them. More recently women, including through Ministers and offices representing their interests, have been only belatedly engaged in reforms to self-identification at the state and territory level.⁵⁶ Women made their views clear in the Parliament, Births, Deaths and Marriages Registration Bill (2022); though, in the event, they were essentially ignored.⁵⁷

Women were frustrated in that process to see the Queensland Government cite the 'Yogyakarta Principles' to validate its actions – principles which neither the Australian nor the Queensland Parliament had considered or endorsed, and which have no international legal standing either. These principles⁵⁸ have also been the subject of growing criticism by human rights experts, including one of the authors of the original principles - Professor of human rights law at King's College London, Robert Wintemute. Wintemute has noted that those who negotiated the principles, which call for states to remove all barriers to self-identification largely ignored the interests of women⁵⁹. An updated (2017) version⁶⁰ directly calls on states to end the registration of the sex and gender of the person in identity documents' – an outcome which is directly antithetical to the success of CEDAW.

A limitations clause

A federal Human Rights Act needs to be as comprehensive as possible but also needs to recognise that few human rights and freedoms are absolute, apart from the right not to be tortured and the right not to be subject to medical experimentation without consent⁶¹. Rather they are 'limited' in certain circumstances. The *European Convention on Human Rights*⁶² does this explicitly by describing rights that are absolute, limited, and qualified. A limitations clause, along the lines the AHRC outlines,⁶³ would help courts, statutory authorities and Australians engaged in the protection of human rights to properly balance conflicts of rights. It would also provide essential reassurance for women who seek to advocate for their rights.

RECOMMENDATIONS

Substantive Human Rights Issues

⁵⁶In the ACT for example, we understand that the Office of Women was not consulted in the drafting of important amendments to the ACT's *Birth, Death and Marriages Registration Act*.

⁵⁷Report No. 41, 57th Parliament, Births, Deaths and Marriages Registration Bill (2022), [Queensland Parliament](#) (online, 14 June 2023).

⁵⁸Anon, [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#) (online, March 2007).

⁵⁹Julie Blindel and Melanie Newman, 'The trans rights that trump all', [The Critic](#) (online, April 2021).

⁶⁰Anon, [The Yogyakarta Principles plus 10](#) (online, 10 November 2017).

⁶¹Attorney General's Department, '[Absolute Rights](#)' (online, undated, accessed 26 June 2023).

⁶²European Union, Equality and Human Rights Commission, [How are your rights protected?](#) (online, undated, accessed 26 June 2023).

⁶³Australian Human Rights Commission, [Free and Equal. Position Paper: A Human Rights Act for Australia](#), Chapter 9.

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1. **RECOMMEND** a review of government law and practice at federal, state and territory levels to ensure the **consistent, accurate and proper application of the words 'sex' and 'gender', 'women' and 'man'** so as not to conflate meanings, or create new forms of discrimination. Gender-neutral language should replace sex-based language to counter stereotypes but sex-based language should be used where biological sex is critical, especially in health care.
2. **RECOMMEND** a review of data collection practices at Commonwealth, state and territory levels by government agencies and other institutions to ensure Australia meets its **legal obligations to monitor human rights trends** and developments. Ensure collection is disaggregated on the basis of sex (as recorded at birth) to inform relevant policies especially those that relate to places and circumstances where women and girls are vulnerable because of their sex, including prisons, domestic violence shelters and rape crisis centres, toilets, and change rooms, as examples.
3. **RECOMMEND** a review of relevant laws, especially the *Sex Discrimination Act 1984* (Cmth) to guarantee the right of women to **safety and security** in all circumstances. It should not be unlawful to exclude men from facilities, services and organisations established to meet the special needs of women.
4. **RECOMMEND** the Commonwealth works with state and territory governments to ensure, and remedy instances, where **'gender identity' self-identification** fails to uphold the rights of women to protection; or where state and territory legislation creates new forms of discrimination, as in overreaching 'anti-conversion' prohibitions.
5. **RECOMMEND** Australia incorporate the Convention of the Rights of the Child into domestic law and that an expert, independent, medical and legal review of the treatment approaches in gender medicine be undertaken to bring our current practices in line with our legal obligations to provide children with the highest attainable standard of health.
6. **ENCOURAGE** the media, courts and statutory authorities to endorse freedoms for all Australians to advocate for their rights, noting in particular the freedoms of association, including on the basis of sex.
