



Feminist Legal Clinic Inc.

PO Box 273, Summer Hill NSW 2130

Mobile: 0402 467 476

www.feministlegal.org

ABN: 17 360 484 300

Department of Prime Minister and Cabinet

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CC: CEDAW Committee
UNRVAW

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Submission on the draft of Australia's ninth periodic CEDAW report

Feminist Legal Clinic Inc. is a community legal service established to advance the human rights of women and girls. We attended Australia's 8th periodic report to CEDAW in 2018. We have been granted Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

We refer to the list of issues provided by the CEDAW Committee and respond to these generally as well as to the Australian Government's draft report. We note our concern that information about this process has not been adequately publicised and that the time frame for providing our feedback to the Australian Government on its draft report is manifestly inadequate considering the breadth of issues to be canvassed. As a result, this submission will be far from comprehensive.

In summary, the Australian Government's track record is one of lip service to women's human rights, while simultaneously legislating to undermine existing sex-based protections and failing to support the few autonomous women's services. This has created conditions conducive to an epidemic of male violence and abuse directed at Australian women and girls.

1. Women's rights and gender equality in relation to the pandemic, recovery efforts and global crises

During the COVID pandemic it became manifestly obvious to what extent essential services in our communities are provided by poorly-paid women, whose care responsibilities both at home and in the workforce increased.¹ Women were forced to juggle their own continuing participation in the paid workforce with the added responsibility of supervising children forced to stay home and attend school remotely and/or providing care to elderly parents otherwise faced with the peril of unreasonable

¹ <https://theconversation.com/covid-19-has-laid-bare-how-much-we-value-womens-work-and-how-little-we-pay-for-it-136042>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9259042/>
https://futurework.org.au/wp-content/uploads/sites/2/2020/12/Women_and_COVID- A_Gender-Inclusive_Recovery.pdf

conditions in aged care facilities. No matter how you spin it, Government support did not fairly compensate women for the increase in their unpaid contributions, or, for that matter, for their increased exposure to domestic and sexual violence resulting from lockdown conditions.

2. and 3. Legislative and institutional framework

The failure to frame domestic violence and sex discrimination legislation for the exclusive protection of women, has meant that it is now increasingly used as a weapon against them by men. Abusive males regularly claim the protection of domestic violence provisions to further victimise women, with increasing misidentification of female victims as perpetrators.² For example, research has shown that almost half the women murdered by an intimate partner in Queensland had previously been labelled by police as the perpetrator of domestic violence.³

The 2013 amendments to the *Sex Discrimination Act*, which deleted the definitions of ‘man’ and ‘woman’ and introduced gender identity protections, have also undermined the effective operation of legislation originally designed to specifically implement CEDAW. Instead of being used to guarantee women “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men,” this legislation is now being accessed by males to undermine affirmative action or special measures. This is clearly demonstrated in the recent case of *Tickle v Giggle*.⁴ This has achieved such an extreme reversal of the objects of the legislation, that some women are now driven to call for the repeal of the *Sex Discrimination Act* altogether.

4. Constitutional and legal framework

Australia’s ability to implement its international human rights obligations in relation to women and girls has been severely undermined by efforts to placate the powerful trans lobby by conflating and replacing ‘sex’ with the socially-constructed concept of ‘gender identity’. For example, rather than working to restore and strengthen the safeguarding role played by mothers to counter the epidemic of child sexual abuse, our legislators have instead focused on erasing the words ‘woman’ and ‘mother’ from legislation altogether.

Amendments to the *Sex Discrimination Act* that render some of the original provisions implementing CEDAW effectively inoperative create an intolerable internal inconsistency. Provisions in state legislation that recognise change of sex on birth certificates also create an inconsistency by undermining the effective operation of the *Sex Discrimination Act* and, according to section 109 of the Australian Constitution, should be considered invalid to this extent.

² <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-accurate-identification-predominant-aggressor/misidentification-significant-issue-enormous-consequences-victim-survivor>
<https://www.abc.net.au/news/2022-03-31/police-misidentifying-domestic-violence-victims-perpetrators/100913268>

<https://womensagenda.com.au/latest/sydney-woman-demands-apology-from-police-after-she-was-misidentified-as-the-perpetrator-of-violence/>
<https://www.theguardian.com/australia-news/2021/may/03/women-murdered-by-husbands-labelled-perpetrators-of-domestic-violence-by-queensland-police>

³ <https://www.theguardian.com/australia-news/2021/may/03/women-murdered-by-husbands-labelled-perpetrators-of-domestic-violence-by-queensland-police>

⁴ https://www.fedcourt.gov.au/_data/assets/pdf_file/0013/120622/Summary-Tickle-v-Giggle-for-Girls-Pty-Ltd-No-2-2024-FCA-960.pdf

This misdirection of effort has ensured not only that women and girl's sex-based rights fail to be protected but, as discussed in subsequent paragraphs, has also facilitated the increase in domestic and sexual violence against women and their children across the country. Any federal charter of human rights which fails to recognise sex-based rights will be worse than useless as it is more likely to be used to facilitate further victimisation of women and girls by violent male perpetrators.

5. Access to justice

Legal Aid services are inadequately resourced to support women, with most of the legal aid budget being allocated to representation of males in criminal proceedings.⁵ Very limited Legal Aid is available in family law matters, with women often left impoverished by proceedings drawn out by vindictive men, who strategically pursue them with that end in mind.

Women are regularly left self-represented against abusive male perpetrators. Piecemeal reforms, that provide grants of legal aid with the purpose of ensuring victims of domestic violence are not left to be cross-examined directly by their perpetrators, are characterised by extensive loopholes. For example, women are often still left unrepresented during interim proceedings in the Family Court, at a stage in matters when a lot of the most damaging orders are made, forcibly separating mothers and their children.

In NSW Local Courts, domestic violence hearings commenced by private application rather than initiated by police are also characterised by this shortcoming, with male perpetrators still able to relish directly cross-examining their victims. This is only one of multiple disadvantages that face women who have been unable to gain the assistance of the police with seeking apprehended violence orders – an all-too-common scenario.

Women's ability to effectively defend themselves and others from male perpetrators of violence and abuse is systemically undermined across all jurisdictions. Women are accused of defamation when they speak out publicly to denounce male perpetrators of violence and are forced to back down and reach settlements because of the costs and difficulty involved in defending such proceedings.⁶ 'Me too' pronouncements are prohibitively hazardous.

Women who call out males who claim to be women to gain an unfair advantage in women's sport, or to gain access to women's spaces, are forced to defend claims of vilification on the ground of gender identity.⁷ Meanwhile, the vile misogynistic attacks on women by trans activists go unchecked.⁸ Feminist activists have their human rights regularly transgressed and incursions on their civil liberties are approved

⁵ <https://www.sbs.com.au/language/english/en/article/navigating-australias-legal-aid-maze/svfoz9r9s>

⁶ <https://theconversation.com/politicians-know-defamation-laws-can-silence-women-but-they-wont-do-anything-about-it-238079>

⁷ <https://www.abc.net.au/news/2020-09-09/canberra-radio-newsreader-told-to-pay-transgender-activist-10000/12642722>; https://www.acat.act.gov.au/_data/assets/pdf_file/0005/1624613/CLINCH-v-REP-No.-2-Discrimination-2020-ACAT-68.pdf

⁸ <https://terfisaslur.com/>
<https://reduxx.info/he-got-away-with-it-trans-activist-sentenced-to-just-five-months-good-behavior-after-leaving-woman-permanently-disabled/>

by human rights agencies and a legal system eager to pander to the powerful trans lobby.⁹

6. National human rights institution

The Australian Human Rights Commission (AHRC) has recently made it abundantly clear that it no longer protects or supports women's sex-based rights. In submissions made on 10 August 2023 in the *Tickle v Giggie* proceedings in the Australian Federal Court, submissions made on behalf of the Sex Discrimination Commissioner provided the following statement of her position:

In summary, the Commissioner submits that the word "sex" is not a biological concept referring to whether a person at birth had male or female physical traits. Nor is it a binary concept, limited to the "male" or "female" sex.¹⁰

This position was repeated in the AHRC's decision to refuse an exemption to the Lesbian Action Group, who were applying to hold events free of males identifying as lesbians, when it concluded:

The Commission is not persuaded it is appropriate and reasonable to make distinctions between women based on their biological sex at birth or transgender experience, and to exclude transgender lesbians, from a community event of this kind.¹¹

In subsequent proceedings in the Administrative Appeals Tribunal, the AHRC led evidence that outrageously claimed that radical feminist lesbians shared more in common with Nazis than with other lesbians or feminists.¹² In view of these developments, we would submit that the existing AHRC is no longer fit for purpose since it fails to even recognise the reality of sex and is actively working to undermine, rather than protect, women's sex-based rights.

7. Temporary special measures

The provision for any temporary special measures, as provided for by section 7D of the Commonwealth *Sex Discrimination Act 1984*, has been completely undermined by the recent Federal Court decision in *Tickle v Giggie*. It is now impossible to effectively exclude males from any women's spaces, services or opportunities without offending against the protections afforded to gender identity. A male wishing to gain access to a women's space, service or opportunity (such as sport or political quotas), merely needs to self-identify as a woman. Any level of further inquiry or scrutiny is likely to fall foul of discrimination provisions. As discussed above, this has created significant inconsistency within Australian discrimination legislation, with sex-based provisions now easily subverted.

⁹https://www.themercury.com.au/subscribe/news/1/?sourceCode=TMWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.themercury.com.au%2Fnews%2Fflaunceston%2Fjess-hoyle-ejection-from-target-not-discrimination-tribunal-finds%2Fnews-story%2F94d27ce77cda732e4a841d095954f649&memtype=anonymous&mode=premium

¹⁰ https://www.fedcourt.gov.au/_data/assets/pdf_file/0006/112299/Submission-of-the-Australian-Human-Rights-Commission.pdf

¹¹ https://humanrights.gov.au/sites/default/files/lesbian_action_group_summary_of_decision_1_0.pdf

¹² From transcript of evidence of Dr Elena Jeffreys in *LAG v AHRC*, Administrative Appeals Tribunal 3 September 2024 – pp117-122

8. Stereotypes and harmful practices

Gender ideology cements and perpetuates sex-based stereotypes and harmful practices. Gender identities based in harmful and sexist stereotypes are being conflated with and allowed to supplant biological sex as a legal category. The Australian Government, in its embrace of this ideology, is acting in breach of its obligations pursuant to Article 5 of CEDAW.

Some of the vilest sexist and misogynistic content online is posted by trans activists.¹³ Rather than working to address this, the eSafety Commissioner is actively supporting extreme trans-activism by attempting to censor women who defend women's sex-based rights. This has included taking action against women who protest the inclusion of males in women's sport or who rebut the suggestion that males can breastfeed babies.¹⁴ Biological reality is being ignored and in its place, we are encouraged to regard sexist tropes as determinative – so high heels and lipstick carry more weight in deciding who is a woman than menstruation and lactation.

9. Gender-based violence against women

Men continue to be overwhelmingly the perpetrators of violence and they are increasingly targeting younger victims. Australia would seem to be amid an epidemic of child sexual abuse, with a quarter of children impacted and girls at double the risk of boys.¹⁵ According to the Australian Institute of Health and Welfare (AIHW), in 2022, 3 in 5 sexual assault victims in Australia were children.¹⁶ Most recorded FDV-related sexual assault victims are female (87%), with 47% of these victims aged 10-17 years. Meanwhile, male victims are usually aged 0-9 years (61%).

Although perpetrators of sexual assault are overwhelmingly male, there is a continued failure to acknowledge and fortify the essential safeguarding role played by mothers and other women. The overturning of the 'tender years' doctrine in the Family Court has opened the way for more fathers to be awarded primary care of young children with devastating consequences. The best interests of the child would be far better served by a Family Court capable of conducting an appraisal of risk that takes account of obvious statistical realities, rather than habitually disregarding women and children's reports of abuse.¹⁷

These hard realities also need to be closely considered by those providing essential care services to children, the elderly, and those with disabilities or who are otherwise vulnerable, to reduce unnecessary exposure to the risk of sexual assault. Instead, male workers are increasingly providing unsupervised intimate care in all these settings. Domestic violence shelters are also increasingly staffed by males and are accommodating individuals based on their gender identity rather than their sex.

¹³ <https://terfisaslur.com/>

¹⁴ <https://reduxx.info/australia-police-warn-woman-over-comments-about-trans-activist-as-esafety-commissioner-continues-censorship-rampage/>
<https://reduxx.info/two-australian-women-told-they-broke-the-law-after-criticizing-trans-identified-male-breastfeeding-child/>

¹⁵ <https://www.eurekastreet.com.au/silent-epidemic-abuse-crisis/>; <https://www.acms.a>

¹⁶ <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/children-and-young-people>

¹⁷ <https://onlinelibrary.wiley.com/doi/full/10.1002/ajs4.171>

Violent and sexual crime committed by males is increasingly falsely attributed to women due to laws that allow men to legally change their sex by self-declaration; thus, making the State complicit in a sinister fraud that not only falsifies crime statistics, but increasingly exposes women and children to increased risk of violence. Violent male sexual offenders are now often accommodated in women's prisons, exposing female inmates to unreasonable risk of sexual assault while detained.

To avoid ongoing confusion, we suggest sexual violence should be referred to by the more accurate term 'sex-based' rather than 'gender-based violence'. The implementation of any action plan by government bodies and women's groups that are incapable of defining what a woman is and that lack an understanding of the fundamental differences between the sexes is doomed to failure.

10. and 11. Extraterritorial obligations, climate change and disaster risk reduction

The Labor Australian Government, elected on a platform of addressing climate change, is disappointingly following in the steps of its predecessor in failing to curb the harmful activity of extractive industries. There is no move to obtain consent from local communities generally, let alone Indigenous women, before approving the devastation of the land with large-scale developments. Despite undertakings to achieve net-zero and to cease deforestation, the Australian Government is showing no genuine signs of honouring its climate change commitments – with decision-makers continuing to approve developments with no regard to these obligations. Instead, the government continues to threaten to further defund free legal services so communities have even less capacity to oppose these developments in the Land and Environment Court.¹⁸

We support the Bougainville women (representatives of whom we met in Geneva in 2018) in their claims for compensation and rehabilitation for the extreme violations of their human rights facilitated by the Australian Government.

12. Trafficking, exploitation of prostitution

In working to decriminalise and legitimise prostitution, Australian Governments are acting in flagrant breach of Article 6 of CEDAW. We continue to urge the Australian Government to step in and adopt the Nordic Model of Prostitution, whereby prostituted women are freed from the threat of prosecution, while those who use and profit from the exploitation of women and girls (buyers, pimps, traffickers and brothel owners etc) are held to account.¹⁹ In this regard we commend the position of the United Nations Special Rapporteur on Violence against Women and Girls, Reem Alsalem.²⁰

¹⁸ <https://www.afr.com/politics/federal/dutton-vows-to-strip-environmental-defenders-office-funding-20240130-p5f13w>

¹⁹ <https://www.catwa.org.au/nordic-model-resources/>

²⁰ <https://www.ohchr.org/en/press-releases/2024/06/special-rapporteur-urges-global-action-recognise-and-combat-prostitution>

13. Participation in political and public life

Just as women are making modest increases in participation in political and public life because of affirmative action measures, the mechanisms are beginning to be put in place to wind back these gains. Gender identity provisions that recognise males as women on the basis of self-identification are quickly rendering temporary special measures effectively ineffective. We are already seeing awards and positions earmarked for women being given instead to males identifying as trans or non-binary.²¹

14. Women, peace and security

We cannot imagine where Australia's deal to purchase nuclear submarines for almost \$5 billion fits into Australia's National Action Plan on Women, Peace and Security 2021-2031 (WPS National Action Plan). If the Australian Government truly considered the impact of warfare on women, peace and security, we suggest it would stop supporting the United States and its unconscionable trade in arms and the death and destruction it facilitates.

15. Nationality

The birth registration process allows for change of name and parentage, and now also sex, based on self-declaration in almost all jurisdictions. Australian birth certificates bear so little relationship with reality that their value is increasingly questionable. It is only a matter of time before people can also choose their own date of birth based on how old they 'feel', as was supported by the Supreme Court of Mexico in 2021.²²

16. Education

Improvements in access to education are offset by a recent decline in the quality and safety of content being taught. There is an increasing trend for parents to withdraw their children from schools rather than have them exposed to harmful and unscientific gender ideology – which appears to be now rampant within the schooling system, and has also resulted in the increasing loss of toilets separated by sex.²³ There is a particularly high rate of teenage girls 'transitioning' at some schools, sometimes without parents even being notified.²⁴ The consequences can be devastating, as discussed below under health.

²¹ https://www.huffpost.com/archive/au/entry/proud-out-loud-holly-conroy_au_5e432023c5b61f8ad4e08326 <https://www.sbs.com.au/news/article/nsw-greens-launch-internal-review-after-backlash-over-transphobic-article/zch2kkc2d> <https://newcastleweekly.com.au/nsws-first-openly-transgender-woman-elected-into-office-in-newy/> <https://web.archive.org/web/20240118230856/https://www.newcastleherald.com.au/story/8490717/pai-ge-johnson-challenges-carol-duncan-for-newcastle-council-seat/> <https://www.newcastleherald.com.au/story/8748022/threatening-voicemail-left-on-labor-cr-carol-duncans-phone/>

²² <https://justiceconnect.org.au/resources/how-to-update-your-gender-on-formal-documents-vic/> <https://www.acepresa.com/english/mexico-a-court-ruling-in-favor-of-age-identity/>

²³ <https://www.familyfirstparty.org.au/leave-the-kids-alone-get-lgbtqa-gender-ideology-out-of-childcare-says-family-first> <https://www.theeducatoronline.com/k12/news/victorian-government-accused-of-making-criminal-threats-to-parents-fighting-genderneutral-toilets/283635>

²⁴ <https://education.nsw.gov.au/rights-and-accountability/legal-issues-bulletins/transgender-students-in-schools> <https://markingtherole.substack.com/cp/144316942>

17. Employment

Our service is inundated with reports of women who have had their employment and livelihood threatened because of raising legitimate concerns about the impact of extreme gender ideology in many contexts. A wide range of people have contacted us, including teachers, academics, social workers, journalists, a variety of health professionals (doctors, nurses etc) and public servants (all levels of government), lawyers, political candidates, artists, breastfeeding counsellors and those operating women's services (such as women's gyms, domestic violence refuges etc). Very few of these matters are publicised, with most women choosing to back down and find other employment rather than have their reputation and livelihood permanently damaged.

Typically, these women have earlier left their unions in disgust over their failure to advocate for women's sex-based rights and therefore most are unrepresented in their negotiations with their employers. As an unfunded service with limited capacity we are unable to represent women in these many matters across every Australian jurisdiction and, like the unions, other community legal centres and legal aid services are also beholden to gender ideology and have also failed women in this area.

In view of this it is to be expected that many women are watching with great interest Moira Deeming's current defamation proceedings against the leader of the Victorian Liberal Party, John Pesutto.²⁵ The significance of these proceedings extends far beyond Mrs Deeming's personal reputation and political career. The actions of Mr Pesutto and others like him have ramifications for all Australian women.

18. Sexual harassment

Australian parliaments continue to be awash with sexual scandal, with more than their fair share of sexual offenders.²⁶ In view of this, and the high risk of corruption that must necessarily accompany this reality, we can only hope that the recently established National Anti-Corruption Commission can be trusted to carry out its mandate. We are concerned that similar progress has not been made in establishing a much-needed Federal Judicial Commission, as our judiciary seems to be similarly afflicted.²⁷

19. Health

Independent member of parliament for Sydney, Alex Greenwich, was successful finally passing a Bill to decriminalise abortion in NSW in 2019. However, this Bill carefully omitted the words 'mother' or 'woman' – a fact that seems to have been disregarded by those who rushed to support Mr Greenwich, after having withheld

²⁵ <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/deeming-v-pesutto>

²⁶ <https://www.theage.com.au/politics/federal/the-unsafe-space-that-is-the-parliament-of-australia-20230616-p5dh8z.html>
<https://www.theguardian.com/australia-news/article/2024/aug/30/nsw-liberal-mp-rory-amon-charged-with-10-child-sexual-assault-offences>

<https://www.parliament.nsw.gov.au/about/Documents/Independent%20Broderick%20Report.pdf>

²⁷ <https://cdn.hcourt.gov.au/assets/news/Statement%20by%20Chief%20Justice%20Susan%20Kiefel%20AC.pdf>

<https://www.lawyersweekly.com.au/biglaw/31872-family-court-judge-resigns-amid-sexual-harassment-investigation>

their support for an otherwise similar Bill put forward by a female parliamentarian just two years earlier.²⁸ It is also noted that the NSW Parliament subsequently voted to pass the notorious ‘Zoe’s Law’, becoming the first Australian jurisdiction to introduce foetal personhood, which fundamentally alters the legal rights of pregnant women.²⁹

Despite the fanfare that attended the removal of the final legal barriers to safe abortion across Australian jurisdictions, as far as we are aware, access to safe abortions has not discernibly improved country-wide. Medicare still does not fully cover pregnancy terminations, and surgical procedures are not readily available through the public hospital system. In rural and remote areas access to termination services can be particularly problematic.

With the misguided support of the Greens and women’s groups, Alex Greenwich is continuing with his agenda to erase women’s sex-based rights, by legislating to allow change of sex on birth certificates by self-declaration and remove the remaining pesky definitions of man and woman in NSW *Anti-Discrimination Act*. Indeed, his proposed omnibus *Equality Legislation Amendment (LGBTIQ+)* Bill 2023, contains a raft of amendments, all of which undermine the health and safety of women and children, including removing remaining constraints on prostitution, legitimising commercial surrogacy arrangements entered into overseas, and facilitating the fraudulent sex change industry.³⁰

These proposed changes will have devastating health impacts, particularly on the health of young women and girls. In view of the findings of the Cass Review and other international investigations, as well as the increasing accounts of distressed detransitioners, the Federal Government has a duty of care to intervene and put a stop to the flagrant breaches of human rights taking place under the guise of ‘gender affirmation’.³¹

20. Social and economic benefits

Inadequate welfare payments and a lack of affordable housing means that single mothers are still forced to raise their children in impoverished circumstances. The recent reinstatement of parenting payments until children reach the age of 14 years is a significant improvement, but more is needed.³² The parenting payment participation requirements can be unnecessarily onerous. Many women are faced with the invidious dilemma of choosing between the support of an abusive male partner or the

²⁸ <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3654>

²⁹ <https://www.abc.net.au/news/2021-11-20/nsw-parliament-passes-zoes-law/100636536>
http://www.wlsnsw.org.au/downloads/law-reform/Ourbodiesourchoices_factsheet_060913.pdf
<https://couthslegal.com.au/blog/zoes-law-new-offence-for-causing-death-of-unborn-child/>

³⁰ For a more detailed critique of this Bill, please refer to
<https://www.parliament.nsw.gov.au/ladocs/submissions/85239/Submission%2046%20-%20Feminist%20Legal%20Clinic.pdf>

³¹ <https://cass.independent-review.uk/home/publications/final-report/>
<https://www.smh.com.au/national/absolutely-devastating-woman-sues-psychiatrist-over-gender-transition-20220823-p5bbyr.html>
<https://www.dailymail.co.uk/news/article-12475521/Transgender-surgery-regret.html>

³² <https://www.abc.net.au/listen/programs/pm/parenting-payment-boost-welcomed-by-single-mothers/102319116>

patriarchal state – with both having a similar penchant for coercively controlling conduct that is punitive and belittling in nature.³³

21. Indigenous women

Indigenous women continue to bear the greatest burden of cruel and unfair treatment within the Australian community. This is illustrated by the fact that 32% of women in custody are Aboriginal, although Aboriginal people make up only 2.9% of the NSW population. There was a 33% increase in the number of women in prison between 2013 and 2019, which was not due to an increase in criminal activity. More than half of these women are on remand or serving short sentences.³⁴

This is particularly disturbing because two-thirds of Aboriginal women in custody are mothers.³⁵ This no doubt goes some way to explain why Aboriginal children make up 44% of those in the out-of-home-care system.³⁶ There are indications that this is often occurring because Indigenous women are being regularly misidentified as the primary perpetrators of domestic violence, with the result that they are unfairly losing care of their children.³⁷ Legislation must be introduced to ensure that when courts are determining bail applications and delivering sentences, priority is given to ensuring that mothers and children are not separated.

Significant ongoing intergenerational trauma is being caused by these systemic failures by our legal system. Clearly, the Australian Government is not doing enough to address ongoing breaches of indigenous women's human rights.

22. Refugee and asylum-seeking women

We are confident that services with greater involvement in this area will make extensive submissions on the Australian Government's well-documented failings in relation to refugee and asylum-seeking women. We simply note that immigration requirements should never be used to justify the separation of a mother from her young children, as this constitutes cruel and unusual punishment for both. Unfortunately, women with limited English are often unaware of their legal rights and may be trapped in abusive relationships by fear of otherwise being deported without their children. While it is to be hoped that the introduction of coercive control provisions in domestic violence legislation may help alleviate this problem, it is our experience that women in the most extremely coercive conditions are the least likely to access these protections. Furthermore, in view of the current oppressive operation of the family law, it is difficult to give these women much cause for hope.

³³ For example, see <https://feministlegal.org/wp-content/uploads/2021/05/ParentNext-Final-Submission.pdf>

³⁴ https://www.sydneycommunityfoundation.org.au/wp-content/uploads/2020/12/KWOOP-PS-No-2-Aboriginal-Women_15Oct20.pdf

³⁵ https://www.sydneycommunityfoundation.org.au/wp-content/uploads/2020/12/KWOOP-PS-No-2-Aboriginal-Women_15Oct20.pdf

³⁶ https://www.alsnswact.org.au/aboriginal_children_bear_the_brunt_of_protection_system_failures

³⁷ https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0020/149510/Discussion-paper-Aboriginal-women-and-communities.pdf

<https://www.emhaws.org.au/post/who-is-the-perpetrator>

<https://theconversation.com/unintended-but-not-unanticipated-coercive-control-laws-will-disadvantage-first-nations-women-188285>

<https://www.sbs.com.au/nitv/article/aboriginal-victims-of-family-violence-wrongly-arrested/dek0y8slh>

23. Women in detention

We have covered our concerns in this area in a submission to the Special Rapporteur on Torture in November 2023, which contains further details and citations to support the assertions that follow.³⁸

The imprisonment rate for Australian women, particularly Indigenous women, has been rising disproportionately for over a decade. Women are often being wrongly identified as perpetrators, and unfairly incarcerated.

The conditions in Australian prisons are unnecessarily degrading, and they expose female prisoners, who typically have a history of trauma, to brutalising treatment and leave them vulnerable to further male violence. A NSW prison officer has recently been gaoled on 27 charges of sexually assaulting female detainees. The Federal Government must move to ensure that only female staff are employed in women's correctional centres.

However, male prison officers are not the only potential source of harm for female inmates. Extreme gender identity ideology is the most recent threat to the safety of women in Australian correctional centres. Male criminals who identify as trans women, including some who are violent sexual offenders, are now increasingly accommodated in Australian women's prisons. Additionally, female prison officers are being coerced into strip searching these men who claim to be women but who often retain intact male genitalia.

24. Marriage and family relations

The family law jurisdiction continues to actively facilitate male violence and abuse of both women and children. Research has demonstrated that the Family Court rarely accepts women and children's accounts of male violence.³⁹ Instead the Family Court regularly orders mothers to share care of children with fathers who are known to them to be violent perpetrators, under threat of otherwise losing contact with their children altogether. The recent amendments and reforms to the *Family Law Act 1975* have failed to address the crisis in domestic violence and child sexual abuse.⁴⁰ The government needs to urgently reinstate the 'tender years' doctrine by legislating a presumption in favour of mothers retaining care of their children.

As it currently operates, the Family Court is an epicentre of human rights abuse for Australian women and children. The dysfunctional application of the Hague Convention on Child Abduction further completes a picture whereby there is no escape for mothers trying to protect their children from violent and abusive fathers.⁴¹ We have covered our concerns in this area more extensively in many other submissions to the Australian Government and international human rights bodies.⁴²

³⁸ <https://feministlegal.org/wp-content/uploads/2023/11/Rapporteur-for-Torture-FINAL.pdf>

³⁹ <https://www.abc.net.au/news/2021-08-09/child-abuse-family-court-findings-statistics/100355902>

⁴⁰ file:///Users/anna/Downloads/Feminist%20Legal%20Clinic-1.PDF

⁴¹ <https://www.hague-mothers.org.uk/2022/05/10/resistance-is-futile/>

⁴² For example, <https://feministlegal.org/wp-content/uploads/2021/07/Letter-to-CSW-on-behalf-of-WCSS.pdf>

Most recently we refer to our correspondence of 5 June 2024 to both the Family Court's Chief Justice and the Commonwealth Attorney-General, to which we have received no response. In our letter we protested the removal of the volunteer operated Women's Court Support Service (WCSS) from the Sydney Family Court after nearly two decades of operation, and its replacement with a funded support service for men. Our letter and the full history of correspondence in respect to this matter can be accessed through our website.⁴³ This outrageous action by the Family Court has the effect that now men are to receive a greater level of social work support in the Sydney Family Court than women - even though men are overwhelmingly the perpetrators of domestic violence and women their victims. We would appreciate an urgent response to our correspondence in respect to this matter.

Additional information

This submission has been prepared at short notice and in haste and may be lacking detail in many areas. We are, however, happy to expand on any point as required.

Yours faithfully



Anna Kerr
Principal Solicitor
Feminist Legal Clinic Inc.
Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.

⁴³ <https://feministlegal.org/wp-content/uploads/2024/06/Letter-re-displaced-WCSS.pdf>
<https://feministlegal.org/reform-family-law-2/>