



Human Rights  
Law Centre

Freedom. Respect. Equality. Dignity. Action.

# Hear our voice

Equal rights for women and girls  
in Australia



Human Rights Law Centre's 2018 CEDAW NGO Shadow Report - Australia



# Human Rights Law Centre

The Human Rights Law Centre protects and promotes human rights in Australia and beyond through a strategic mix of legal action, advocacy, research, education and UN engagement.

We work to uphold the rights of some of the most vulnerable communities in Australia, including Aboriginal and Torres Strait Islander peoples, people seeking asylum, people in detention, women denied reproductive health rights and LGBTI people.

## Contact

Lee Carnie  
Human Rights Law Centre  
Level 17, 461 Bourke Street  
Melbourne VIC 3000

Email:

[Lee.carnie@hrlc.org.au](mailto:Lee.carnie@hrlc.org.au)

Web:

[www.hrlc.org.au](http://www.hrlc.org.au)

Follow us:

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Authors: Lee Carnie, Adrienne Walters, Shahleena Musk, Anna Brown, Daniel Webb & David Burke

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Aboriginal and Torres Strait Islander people should be aware that this report may contain the images and names of people who have passed away.

# Contents

<b>Executive summary</b>	<b>1</b>
<b>Summary of recommendations</b>	<b>2</b>
<b>Legal and institutional protection of rights</b>	<b>3</b>
<b>Refugee and asylum seeker women and girls</b>	<b>4</b>
<b>Fairer criminal justice systems</b>	<b>7</b>
<b>Safe access to reproductive healthcare</b>	<b>10</b>
<b>LGBTI women and girls</b>	<b>12</b>

Photo: HRLC Director of Legal Advocacy Ruth Barson and writer, activist and advocate for the decarceration of Aboriginal and Torres Strait Islander people Vicki Roach



# Executive summary

*All women deserve to be treated fairly and equally, and to be free from discrimination.*

The Human Rights Law Centre (HRLC) welcomes the opportunity to provide an updated shadow report to the Committee on the Convention on the Elimination of all forms of Discrimination Against Women.

Our *Hear Our Voice* report highlights discrete gaps in human rights protections for women and girls across the HRLC's focus areas, building on the more comprehensive 2014 CEDAW Shadow Report and Aboriginal and Torres Strait Islander Parallel Report, which the HRLC contributed to.<sup>1</sup>

While Australia has taken positive steps to reduce discrimination against women and girls since the last CEDAW review 8 years ago, the voices of some of the most marginalised women and girls continue to go unheard.

This report shares the impact of human rights abuses on women and girls whose voices and experiences have been overlooked by successive Australian governments:

- Mothers forced to raise their children in a constant state of legal uncertainty after seeking asylum and safety in Australia, or in offshore detention facilities rife with abuse.
- Women being siphoned into criminal justice systems at increasing rates, particularly Aboriginal and Torres Strait Islander women, instead of being supported to escape violence and/or care for their children.
- Women and girls whose needs are neglected in prisons and who are routinely forced to endure invasive and degrading strip searches.
- Women denied safe access to basic reproductive health services.
- Lesbian, bisexual and queer women and girls who continue to face high levels of discrimination and harassment, transgender women and girls who face barriers to legal recognition, and intersex girls who undergo surgery and sterilisation without their full, free and informed consent.

# Summary of recommendations

Australian governments should:

1. Legal protection of rights: Introduce a comprehensive Charter of Rights, and an Equality Act that consolidates and modernises existing discrimination protections, to ensure the human rights of women and girls are protected across Australia.
2. Refugee and asylum seeker women and girls: Immediately bring all women and girls on Nauru to safety in Australia, not transfer any more women and girls to Nauru, and reunite, in Australia, all families that have been separated by offshore immigration processing.
3. Women and girls in criminal justice systems:
  - (a) Address laws and policies that unfairly contribute to the growing number of women and girls in prison, particularly Aboriginal and Torres Strait Islander women and girls.
  - (b) Prioritise community-based and culturally-appropriate programs, services and accommodation options to divert women and girls from criminal justice systems.
  - (c) Urgently implement the recommendations of the Australian Law Reform Commission's *Pathways to Justice Report*.
  - (d) Prohibit strip searching except as a measure of absolute necessity and as a last resort.
4. Women's reproductive health rights: Ensure abortion is decriminalised and replaced with laws that respect women's autonomy, and ensure safe and private access to abortion services.
5. LGBTI women and girls:
  - (a) Implement activities to reduce violence, bullying and harassment experienced by LGBTI women and girls.
  - (b) Improve access to legal recognition of gender that respects a person's gender identity.
  - (c) Introduce legislation prohibiting unnecessary medical interventions on intersex girls without full, free and informed consent except in cases of absolute medical necessity.

# Legal & institutional protection of rights

## A Charter of Rights for Australia

Australia should enshrine the values of freedom, equality, respect and dignity in a Charter of Rights that protects the rights of all, particularly women and girls.

Australia is the only Western democracy without comprehensive constitutional or legislative protection of basic human rights at a national level. Many basic rights remain unprotected and others are haphazardly covered by an assortment of laws.<sup>2</sup> These current protections can be easily removed or are not enforceable.<sup>3</sup>

As the 2014 NGO Shadow Report noted,<sup>4</sup> UN treaty bodies have repeatedly expressed concerns about Australia's lack of entrenched institutional protections.<sup>5</sup> A majority of Australians support stronger human rights protections against potential government abuse of power.<sup>6</sup>

## Equality & non-discrimination

National anti-discrimination laws remain inconsistent and outdated.

The laws include significant exceptions and barriers to individuals accessing effective remedies, including exemptions which allow sporting clubs and religious organisations to discriminate against women and girls.

Unfortunately, attempts to modernise and consolidate national anti-discrimination laws to date have failed.

### Recommendation 1

The Australian Government should introduce:

- (a) A comprehensive, judicially-enforceable, Charter of Rights to ensure that the human rights of all people, including women and girls, are protected across Australia.
- (b) A comprehensive Equality Act that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies, including against systemic and intersectional discrimination.

# Refugee and asylum seeker women and girls

## Dangerous conditions

Women and girls who seek asylum in Australia should be treated with dignity, and their fundamental human rights protected.

However, any person seeking asylum who arrives in Australia by boat after 19 July 2013 is subject to mandatory removal and indefinite limbo in an Australian Government facility on Nauru or Manus Island.<sup>7</sup>

More than 300 women seeking asylum have been detained on Nauru's Regional Processing Centre (RPC), with approximately 200 women remaining housed both inside and outside the RPC.<sup>8</sup>

Since asylum seeker women were first removed to Nauru, there have been continued and serious reports of violence against women, including sexual violence. In 2015, 30 formal allegations of child abuse and 15 allegations of sexual assault or rape had been made against RPC staff.<sup>9</sup> A security subcontractor on Nauru also fired 11 staff because of allegations including inappropriate relationships, alleged sexual assault and sexual harassment.<sup>10</sup> Incident reports from Nauru leaked in 2016 reveal more instances of alleged sexual assault, harassment and abuse.<sup>11</sup>

This violence is not confined to women held in the RPC; there have been many reports of violence against asylum seeker and refugee women living in the Nauruan community.<sup>12</sup>

The HRLC acts for most of the refugee and asylum seeker women brought to Australia from Nauru for medical treatment or to give birth. Information provided to us by our clients indicates the number of women who have been the victims of violence, including sexual violence, is significantly underreported.

The UN Special Rapporteur on violence against women stated in her end of mission statement that there is no adequate investigation of complaints of violence and abuse in Nauru.<sup>13</sup>

Similarly, the UN Special Rapporteur on the human rights of migrants found that Australia is responsible for the cruel, inhuman and degrading treatment of women on Nauru:

*accounts of rape and sexual abuse of female asylum seekers and refugees by security guards, service providers, refugees and asylum seekers or by the local community, without providing a proper and independent investigation mechanism, was making life of women in the RPCs unbearable.<sup>14</sup>*

In addition to threats of gender-based violence, conditions are well below international standards,<sup>15</sup> particularly in relation to medical services.<sup>16</sup>

Numerous organisations have highlighted the lack of appropriate medical care in Nauru.<sup>17</sup> The lack of appropriate facilities combined with the impact of prolonged indefinite detention has led to the prevalence of depression and post-traumatic stress disorder for asylum seekers and refugees in Nauru being among the highest ever recorded.<sup>18</sup>

#EvacuateNow vigil for refugees and asylum seekers held on Manus Island and Nauru (July 2017, Melbourne)



## Separation of families

International law has long recognised that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.<sup>19</sup> The UNHCR also recognises that the “refugee family is essential to the successful integration of resettled refugees” and that “family reunification plays a significant role in meeting the long-term needs of resettled refugees and assists them to adjust and integrate to the country of resettlement.”<sup>20</sup>

However, the Australian Government continues to arbitrarily separate women and girls from their family members as part of its offshore detention regime.<sup>21</sup>

**Government policy and its arbitrary implementation** has meant that mothers and daughters in Nauru and Australia have been separated from their sons, fathers and other family members.

The UNHCR has highlighted the link between this separation of immediate family members and serious deterioration in mental health and called for this separation to be addressed “as a matter of urgency”.<sup>22</sup>

Despite these calls, the Australian Government refuses to reunite these families.

The HRLC assists three types of separated refugee and asylum seeker families:

- (a) Families permanently separated because they arrived in Australia and sought asylum on different dates.
- (b) Families separated when one of them needs to be evacuated from Nauru for urgent medical treatment, who face government tactics designed to pressure those in Australia to return and discourage them from asserting legal claims to stay - forcing people to choose between their health and safety and their family.
- (c) Families separated when expectant mothers have been brought to Australia to give birth but the child's father is deliberately left behind – again, a move designed to pressure the mother and newborn to return to Nauru 'voluntarily'.

### #LetThemStay protest for refugees facing deportation from Australia (February 2016, Melbourne)



The Australian Government has tried to avoid its responsibility by contending that its international obligations are not engaged since it is only providing "support" to Nauru.<sup>23</sup> This is clearly wrong.

Numerous UN treaty bodies, parliamentary committees and courts have found that the Australian Government maintains effective control over the RPCs.<sup>24</sup> The Australian Government remains responsible for the women and girls it sends to Nauru and the harm they endure there.

## Recommendation 2

The Australian Government should:

- (a) Immediately bring all the women and girls who have been stranded for almost five years on Nauru to safety in Australia.
- (b) Not transfer any further women and girls to the Nauru RPC.
- (c) Reunite, in Australia, all families that have been separated by its offshore immigration processing policy.

# Fairer criminal justice systems

*Australian governments should seek to ensure that women and girls who experience discrimination, violence and marginalisation have opportunities to study, work and spend time with their families.*

## Growing numbers of women are imprisoned

Imprisonment rates for women have surged over the last decade.<sup>25</sup>

Aboriginal and Torres Strait Islander women are locked up at significantly higher rates than non-Indigenous women – despite being around 3 per cent of women in Australia, they are 34 per cent of women in prison.

Between 2000 and 2015, Aboriginal and Torres Strait Islander women imprisonment rates increased 118.7 per cent, compared to 50.6 per cent for men.<sup>26</sup>

The rate at which women are imprisoned awaiting trial or sentencing ('on remand') has grown significantly. Women on remand have little, if any, access to services and programs. Many women are imprisoned on remand because of a lack of safe accommodation or rehabilitation options in the community.<sup>27</sup>

Studies suggest that up to 90 per cent of women in prison are survivors of violence.<sup>28</sup> The majority have dependent children, whose lives can be torn apart by the imprisonment of their primary carer.<sup>29</sup>

The prison environment can greatly exacerbate the trauma and disadvantage experienced by women prior to incarceration.<sup>30</sup>

As the Australian Law Reform Commission found, there are not enough diversion programs and support services, particularly designed by and for Aboriginal and Torres Strait Islander women.<sup>31</sup>

Some laws have a disproportionate impact on women, and Aboriginal and Torres Strait Islander women. For example, in 2014, a young Aboriginal woman, Ms Dhu, died in police custody in Western Australia after being locked up under a law that authorises imprisonment for people who cannot pay monetary penalties. These laws remain on the statute books despite the Coroner recommending their abolition in December 2016.<sup>32</sup>

# Women held in inappropriate facilities

Women whose lives are controlled by the state should be housed in facilities that are designed for their unique needs, respect their privacy and guarantee their safety.

Women are held in units within larger facilities designed for, and overwhelmingly occupied by, male prisoners and staff. In the Northern Territory, 74 women are held in Darwin prison, alongside 1,087 men. In Alice Springs, 48 women live in a facility occupied by 642 men.<sup>33</sup> The vast majority of these women are Aboriginal.

Both facilities are over-crowded, "unsatisfactory" and "unsuitable".<sup>34</sup> Two recent independent reports document discrimination in terms of access to services and programs and a lack of facilities for women with children living with or visiting them.<sup>35</sup>

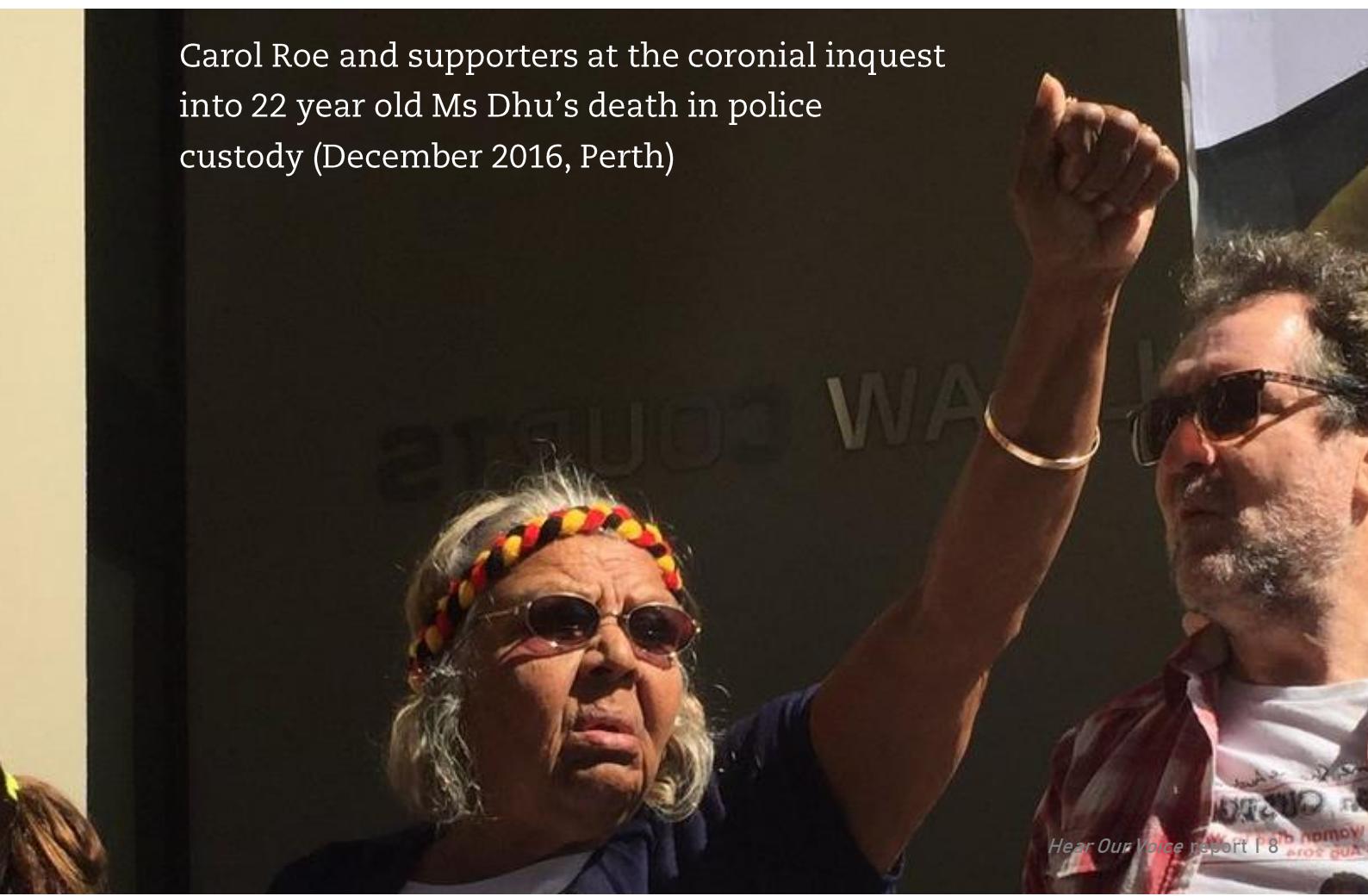
Similar issues arise for girls in youth justice facilities.<sup>36</sup>

Australian governments are locking women up but failing to meet women's unique reproductive and maternal health needs.

For example, South Australia does not offer mother-baby accommodation to mothers of newborn babies.<sup>37</sup>

In Western Australia, a woman and newborn baby were recently saved from separation by urgent legal intervention after the Government claimed a lack of capacity in the mother-baby unit at Bandyup women's prison. A month earlier, at the same prison, an Aboriginal woman was forced to give birth alone in her prison cell.<sup>38</sup>

Carol Roe and supporters at the coronial inquest into 22 year old Ms Dhu's death in police custody (December 2016, Perth)



*Women detained by governments across Australia should be treated with respect for their dignity and humanity.*

## Strip searches

Strip searching is a routine practice in most women's prisons around Australia.

Strip searches require women, most of whom are survivors of violence, to strip naked in front of two guards. They are generally required in a range of situations, including contact visits with family.

In Victoria, strip search records obtained by the HRLC revealed that of 6,200 searches over two three-month periods in 2014 and 2015–16, only six minor items of contraband were detected, none of which were recorded as illicit drugs or weapons.<sup>39</sup>

Further, the Victorian Ombudsman recently found that of 148 seizures in 2016–17 in Victoria's largest women's prison, only four involved items seized in the contact visits centre. Only one of the four entries involved a drug – half a blood pressure tablet.<sup>40</sup>

Girls in youth detention facilities are also strip searched. In the Northern Territory, a Royal Commission found that thousands of strip searches had been conducted on a small number of children over an eight year period, and that girls had been subject to strip searches and "inappropriate sexualised attention" by male guards.<sup>41</sup> The Northern Territory recently introduced a Bill to prohibit routine strip searches of children.<sup>42</sup>

There is a clear need to stop contraband from entering prisons. However, routine strip searching is incompatible with women and girl's right to privacy, humane treatment and the Bangkok Rules.<sup>43</sup>

Less intrusive alternatives are readily available and are being successfully implemented in the Australian Capital Territory and United Kingdom.

## Recommendation 3

The Australian Government should:

- (a) Address laws and policies that unfairly contribute to the growing number of women and girls in prison, particularly Aboriginal and Torres Strait Islander women and girls.
- (b) Prioritise community-based and culturally-appropriate programs, services and accommodation options to divert women and girls from criminal justice systems.
- (c) Urgently implement the recommendations of the Australian Law Reform Commission's Pathways to Justice Report.
- (d) Prohibit strip searching except as a measure of absolute necessity and as a last resort in women's prisons and youth detention facilities.



# Safe access to reproductive healthcare

Photo: Shari Birse. Women protest for rights to access abortion services in Queensland (May 2017, Brisbane)

*All women and girls should have the right to access essential health services, including basic reproductive healthcare.*

## Respecting women's bodily autonomy

Australia has a duty to guarantee safe access to abortion services and post-abortion care.<sup>44</sup>

The fundamental principles of equality and non-discrimination require that the rights of a pregnant woman to life, health and bodily autonomy be given priority over an interest in prenatal life.<sup>45</sup>

Abortion is treated as a criminal justice issue rather than a health issue in a number of jurisdictions around Australia.

Restrictive abortion laws, or a failure to ensure reproductive health services are accessible, lead to worse health outcomes for women – women may be harmed by being forced to carry an unwanted pregnancy to term or resorting to unsafe clandestine options.

These risks are heightened for women and girls whose circumstances make accessing health services more difficult, including those living on low incomes or remotely, women with a disability, Aboriginal and Torres Strait Islander women and women of culturally and linguistically diverse backgrounds.

Peak health bodies in Australia have said that the legal status of abortion directly affects the planning, safety and quality of reproductive health services and support the decriminalisation of abortion.<sup>46</sup>

All Australian states and territories should ensure that their laws facilitate safe and equitable access to abortion services.

This requires, at a minimum, all Australian governments to comprehensively remove abortion and abortion-related offences from their criminal laws.

Each jurisdiction should also remove requirements to obtain third party approval and prove sufficient grounds for abortion, at least for pregnancies up to 24 weeks. More broadly, states and territories should aim for nationally consistent and human rights compliant abortion laws.

*Women in some parts of Australia continue to suffer harassment and intimidation from anti-abortionists outside reproductive health clinics.*

## Safe access zones

As a result, some women will delay or avoid accessing vital healthcare. Other women and clinic workers suffer psychological harm.<sup>47</sup> In 2001, a clinic security guard was murdered in Victoria.<sup>48</sup>

Tasmania, Victoria, the Australian Capital Territory and Northern Territory have enacted laws that create safe access zones around abortion clinics.<sup>49</sup>

Within the zones it is unlawful to undertake a range of behaviours, including harassing, intimidating and recording women attending abortion clinics. The zones are effective in preventing harassment of staff and patients.

However, the Tasmanian and Victorian laws are being challenged by anti-abortionists in the High Court of Australia on the grounds that they impair the implied freedom of political communication in Australia's Constitution.<sup>50</sup>

### Recommendation 3

Australian governments should:

- (a) Ensure that abortion is comprehensively decriminalised and replaced with laws that respect women's autonomy.
- (b) Ensure women and girls can safely and privately access abortion services, including through the enactment of safe access zone laws.

# LGBTI women and girls

## Discrimination and harassment

LGBTI women and girls should have the same opportunities to study, work and be accepted in Australian communities.

There have been positive developments in removing discrimination against LGBTI people under the law, including marriage equality, adoption equality and increased legal protections against discrimination.<sup>51</sup> However, LGBTI women and girls face ongoing stigma and discrimination.<sup>52</sup>

Lesbian, bisexual and queer women and girls continue to face high levels of discrimination and harassment which cause poorer mental health outcomes and higher rates of suicidal behaviours and self-harm.<sup>53</sup>

For example, 61 per cent of same-sex attracted young people report experiencing verbal homophobic abuse.<sup>54</sup> Lesbian women are more likely to engage in self harm and attempt suicide – 46 per cent of young lesbian women reported self-harm and 1 in 5 had attempted suicide.<sup>55</sup> Bisexual women are more likely to experience higher levels of psychological distress than the general population.<sup>56</sup>

Research on the experiences of transgender and intersex people also reveal significant rates of discrimination.<sup>57</sup> However, there are no specific Australian Government programs designed to address violence, discrimination and harassment experienced by LGBTI women and girls, and access to targeted, non-discriminatory physical and mental health services remains limited.<sup>58</sup>



# Legal recognition of sex and gender

Every person in our community should have the freedom and independence to live their own lives, and be legally recognised for who they are.<sup>59</sup>

Across most states and territories in Australia, outdated legal barriers prevent many transgender women and gender diverse people from changing their legal gender to reflect their gender identity.<sup>60</sup>

The Australian Government Guidelines on the Recognition of Sex and Gender have improved access to passports in the affirmed gender of Australian citizens without invasive medical procedures and improved access to an “X” marker, but require updating.<sup>61</sup>

Most state and territory laws fall short of international best practice and generally require surgical intervention, a person to be over 18, a person to be unmarried and only allow access to “male” or “female” classifications.<sup>62</sup>

*Intersex women and girls are entitled to the same dignity, respect and bodily integrity that every human being is entitled to.*

## Bodily autonomy for intersex girls

Intersex advocates report that medically unnecessary surgeries and other procedures continue to be performed on intersex infants and children in Australia before they are able to provide informed consent, which often involve irreversible consequences (e.g. sterilisation).<sup>63</sup>

There remains a lack of integration of intersex people and their families in medical teams. Limited information or education is available about harmful practices performed on intersex children, and critical peer support services are under-funded.<sup>64</sup>

There is also a notable lack of redress and compensation for intersex people who have undergone medically unnecessary surgery or other medical treatment without their informed consent, including support and rehabilitation.<sup>65</sup>

These medical treatments have been described by UN treaty bodies as a “harmful practice,” which cause “physical and psychological suffering”.<sup>66</sup>

In 2017, UN treaty bodies expressed concern about intersex children in Australia being subjected to early surgeries and medical interventions before they are able to provide full, free and informed consent.<sup>67</sup>

The Yogyakarta Principles Plus 10 require all States to ensure that legislation protects everyone from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics.<sup>68</sup>

In 2013, the Australian Senate Community Affairs References Committee released its report on the involuntary or coerced sterilisation of intersex people in Australia.<sup>69</sup> These recommendations have not been implemented across Australia.



Photo: Sam Matthews. Group of trans and gender diverse people share their stories for the Self Definition Project (April 2017, Adelaide) (see <http://www.selfdefinition.tv/>).

## Recommendation 5

Australian governments should:

- (a) Implement activities to reduce violence, bullying and harassment experienced by LGBTI women and girls.
- (b) Remove legal barriers to gender recognition while sex or gender continues to be registered on birth certificates.
- (c) Introduce legislation prohibiting unnecessary medical interventions on intersex infants and children without full, free and informed consent except in cases of absolute medical necessity, and implement the recommendations of the 2013 Australian Senate Report *Involuntary or Coerced Sterilisation of Intersex People in Australia*.

<sup>1</sup>YWCA Australia et al, *2014 CEDAW Shadow Report - A non-government perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* (September 2014) [https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA\\_CEDAW\\_Main-Report\\_final.pdf](https://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA_CEDAW_Main-Report_final.pdf); YWCA et al, *2014 CEDAW Shadow Report: Aboriginal and Torres Strait Islander Parallel Report - An Aboriginal and Torres Strait Islander women's perspective on Australia's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* (September 2014) [http://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA\\_CEDAW\\_Indigenous\\_final.pdf](http://www.equalityrightsalliance.org.au/wp-content/uploads/2017/01/YWCA_CEDAW_Indigenous_final.pdf).

<sup>2</sup> For example, *Australian Constitutions* 80, 116 & 117; federal discrimination laws - *Fair Work Act 2009* (Cth); *Australian Human Rights Commission Act 1986* (Cth); *Race Discrimination Act 1975*(Cth); *Sex Discrimination Act 1984*(Cth); *Disability Discrimination Act 1992*(Cth); *Age Discrimination Act 2004*(Cth); state and territory charters of rights - *Human Rights Act 2004*(ACT); *Charter of Human Rights and Responsibilities Act 2006*(Vic); and common law protections for procedural fairness in criminal justice.

<sup>3</sup> For example, statutory and common law protections can be amended by Parliament, and international treaties which Australia has ratified but have not been incorporated into domestic law.

<sup>4</sup> Above n 1, recommendations 1-4.

<sup>5</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia* (CEDAW/C/AUL/CO/7) (2010) at [25]; Human Rights Committee, *Concluding Observations: Australia* (CCPR/C/AUS/CO/6) (2017) at [6]; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia*, (CERD/C/AUS/CO/18-20) (2017) at [6]; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (E/C.12/AUS/CO/5) (2017) at [6]; Committee against Torture, *Concluding Observations: Australia* (CAT/C/AUS/CO/1) (2008) at [9]-[10]; Committee on the Rights of the Child, *Concluding Observations: Australia*(CRC/C/AUS/CO/4) (2012) at [12].

<sup>6</sup> In 2009-2010, the National Human Rights Consultation found that a Human Rights Act was supported by over 87 per cent of a record 35,000 public submissions. It was a key recommendation of the National Human Rights Consultation Committee but was not adopted by the Australian Government. National Human Rights Consultation Committee, *National Human Rights Consultation: Report* (2009).

<sup>7</sup> *Migration Act 1958*(Cth) s198AD.

<sup>8</sup>The most recent available figures are from 27 February 2017: *Questions taken on notice by the Department of Immigration and Border Protection to Senate Estimates*, Senate, Canberra (28 April 2017).

<sup>9,10</sup> Part 2 of *Questions taken on notice by Transfield Services to Select Committee on recent allegations relating to the conditions and circumstances at the regional processing centre in Nauru*, Senate, Canberra (19 May 2015) quoted in Wendy Bacon et al, *Protection Denied, Abuse Condoned: Women at risk on Nauru* (June 2016) [https://static1.squarespace.com/static/5624aa24e4b0bca6fa63ec33/t/5754f2f327d4bd54e0327996/1465185083858/Women\\_on\\_Nauru\\_WEB.pdf](https://static1.squarespace.com/static/5624aa24e4b0bca6fa63ec33/t/5754f2f327d4bd54e0327996/1465185083858/Women_on_Nauru_WEB.pdf) 6.

<sup>11</sup> Nick Evershed et al, 'Explore the Nauru Files', *The Guardian* (2016) <https://www.theguardian.com/news/series/nauru-files>.

<sup>12</sup> Wendy Bacon et al, above n 9, 10.

<sup>13</sup> Dubravka Šimonović, *End of Mission Statement* (27 February 2017) <<http://un.org.au/files/2017/02/End-of-mission-statement-by-Dubravka-Simonovic-draft-final-.docx>>.

<sup>14</sup> Francois Crepeau, Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants on his Mission to Australia and the Regional Processing Centres in Nauru*, UN Doc A/HRC/35/25/Add.3 (2017) 2, at [78].

<sup>15</sup> UNHCR monitoring visit to the Republic of Nauru 7 to 9 October 2013, <http://www.unhcr.org/en-au/publications/legal/58117b931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html>.

<sup>16</sup> See, e.g. Amnesty International, *Island of despair: Australia's "processing" of refugees on Nauru* (2016) 24 <https://amnesty.org.au/wp-content/uploads/2016/10/ISLAND-OF-DESPAIR-FINAL.pdf>; Human Rights Watch, *Submission by Human Rights Watch on Australia to the Committee on Economic, Social and Cultural Rights* (2 May 2017) <https://www.hrw.org/news/2017/05/02/submission-human-rights-watch-australia-committee-economic-social-and-cultural>.

<sup>17</sup> Ibid.

<sup>18</sup> Indrika Ratwatte, 'I am old. I only wanted a small life. I have no hope left', *The Guardian* (28 March 2018) <[https://www.theguardian.com/commentisfree/2018/mar/28/i-am-old-i-only-wanted-a-small-life-i-have-no-hope-left?CMP=soc\\_568](https://www.theguardian.com/commentisfree/2018/mar/28/i-am-old-i-only-wanted-a-small-life-i-have-no-hope-left?CMP=soc_568)>.

<sup>19</sup> Ibid. The UNHCR has repeatedly raised the impact of indefinite detention on the mental health of asylum seekers and refugees in Nauru and Manus Island. See, e.g. UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees on the Inquiry into the Serious Allegations of Abuse, Self-harm and Neglect of Asylum-seekers in Relation to the Nauru Regional Processing Centre, and any like Allegations in Relation to the Manus Regional Processing Centre Referred to the Senate Legal and Constitutional Affairs Committee* (12 November 2016) [13].

<sup>20</sup> See Article 16 of the Universal Declaration of Human Rights (10 December 1948).

<sup>21</sup> UNHCR, 'Background note: family reunification in the context of resettlement and integration', (June 2001) <http://www.unhcr.org/3b30baa04.pdf>.

<sup>22</sup> Above n 13, at [48].

<sup>23</sup> Committee on the Elimination of All Forms of Discrimination against Women, *List of issues and questions in relation to the eighth periodic report of Australia: Replies of Australia* (Advance Unedited Version) 70th sess (CEDAW/C/AUS/Q/8/Add.1) (16 March 2018) at [162].

<sup>24</sup> Above n 5, Human Rights Committee at [35]; Committee on Economic, Social, and Cultural Rights, at [18]; Committee on the Elimination of Racial Discrimination at [30]. 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* (2015); Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Incident at the Manus Island Detention Centre from 16 February to 18 February 2014* (2014). In *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483, the Federal Court held the Australian Government owed a duty of care to a refugee living in Nauru, partly because of the degree of control exercised by the government, at [253], [276].

<sup>25</sup> Sentencing Advisory Council, *Victoria's Prison Population 2005 to 2016* (November 2016) <https://www.sentencingcouncil.vic.gov.au/publications/victoria%E2%80%99s-prison-population-2005-2016>.

<sup>26</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (17 November 2016) <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>.

<sup>27</sup> See e.g., 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* (2017) <https://www.hrlc.org.au/news/2017/5/10/over-represented-overlooked-report> 37.

<sup>28</sup> Australian Institute of Family Studies, Commonwealth Government, *Addressing Women's Victimation Histories in Custodial Settings* (December 2012)

<https://aifs.gov.au/publications/addressing-womens-victimisation-histories-custodial-settings>; Moloney et al, 'Women in Prison: The Central issue of Gender Characteristics and Trauma History' (2009) 126 *Public Health* 426; Holly Johnson, 'Drugs and Crime: A Study of Incarcerated Female Offenders' 63 *Australian Institute of Criminology* (2004).

<sup>29</sup> See e.g., Victorian Ombudsman, *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* (Discussion Paper, October 2014) <https://www.ombudsman.vic.gov.au/getattachment/280f4a06-5927-4221-bf64-d884ba6abaf9/>. See also, Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>.

<sup>30</sup> See Alison Liebling and Shadd Maruna (eds), *The Effects of Imprisonment* (Willan, Cullompton, 2005); Marie Serve and Bree Carlton, 'Women, Trauma, Criminalisation and Imprisonment' (2010) 22 *Current Issues in Criminal Justice* 294. On the intergenerational trauma experienced by many Aboriginal and Torres Strait Islander people in Australia, see Healing Foundation, 'Growing up strong and deadly: healing for children and young people' (Working Paper, Healing Foundation, 2013).

<sup>31</sup> Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (2018) <https://www.alrc.gov.au/publications/pathways-justice-summary>. See also, Human Rights Watch, "I Needed Help, Instead I was Punished": Abuse and Neglect of Prisoners with Disabilities in Australia (2018) [https://www.hrw.org/sites/default/files/report\\_pdf/australia0218\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/australia0218_web.pdf). The UN Rules for the Treatment of Women Prisoners require diversion programs tailored to the needs of women to be implemented wherever appropriate: see *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)*, A/RES/65/229 (16 March 2011) rules 57-8.

<sup>32</sup> See Human Rights Law Centre and Change the Record, above n 29; Coroner's Court of Western Australia, *Inquest into the death of Ms Dhu* (16 December 2016) [http://www.coronerscourt.wa.gov.au/l/inquest\\_into\\_the\\_death\\_of\\_ms\\_dhu.aspx?uid=1644-2151-2753-9965](http://www.coronerscourt.wa.gov.au/l/inquest_into_the_death_of_ms_dhu.aspx?uid=1644-2151-2753-9965).

<sup>33</sup> Department of Attorney-General and Justice, 'NT Prisoner Numbers Reach a New Record High' (Media Release, 17 April 2018).

<sup>34</sup> Hamburger et al, *A Safer Northern Territory through Correctional Interventions: Report of the Review of the Northern Territory Department of Correctional Services* (2016) 109.

<sup>35</sup> Ibid; Northern Territory Ombudsman, *NT Investigation Report: Women in Prison I- Alice Springs Women's Correctional Facility* (May 2017).

<sup>36</sup> Office of the Inspector of Custodial Services, *2017 Inspection of Banksia Hill Detention Centre* (2018) [http://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-tp---banksia-hill-report-116/\\$file/Banksia%20Hill%20Report%20116%20FINAL.pdf](http://www.parliament.wa.gov.au/WebCMS/WebCMS.nsf/resources/file-tp---banksia-hill-report-116/$file/Banksia%20Hill%20Report%20116%20FINAL.pdf) 32.

<sup>37</sup> Juliette McIntyre, *Mother-and-Infant Facilities at Adelaide Women's Prison: A Cost Effective Measure in the Best Interests of the Child* (2017).

<sup>38</sup> See Human Rights Law Centre, 'Aboriginal Baby to Stay with her Mother at Bandyup Women's Prison' (27 April 2017); Sarah Collard, 'Prisoner Gives Birth in Cell at Perth's Bandyup Prison, Despite Calls for Help' *ABC Online* (1 April 2018).

<sup>39</sup> See Human Rights Law Centre, *Total Control: Ending the Routine Strip Searches of Women in Victoria's Prisons* (2017) <https://www.hrlc.org.au/reports/2017/12/5/report-total-control-ending-the-routine-strip-searching-of-women-in-victorias-prisons>.

<sup>40</sup> Victorian Ombudsman, *Implementing OPCAT in Victoria: Report and Inspection of the Dame Phyllis Frost Centre* (2017) <https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Implementing-OPCAT-in-Vic-report-and-inspection> [419].

<sup>41</sup> Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Vol 2A) (17 November 2017) <https://childdetentionnt.royalcommission.gov.au/Pages/Report.aspx> 447-9.

<sup>42</sup> *Youth Justice Legislation Amendment Bill 2018* (NT) cl 17.

<sup>43</sup> See Human Rights Law Centre, above n 41, for an analysis of how routine strip searches are incompatible with human rights. See also *Bangkok Rules*, above n 31, rule 20.

<sup>44</sup> Committee on Economic, Social and Cultural Rights, *General Comment No 22: Sexual and Reproductive Health* (E/C.12/GC/22) (2016) [28].

<sup>45</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation 24: Women and Health* (A/54/38/Rev 1) (1999) at [11]; United Nations Human Rights Committee, *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication no. 2324/2013 (CCPR/C/116/D/2324/2013)* (9 June 2016) at [7.9]-[7.11]. Ibid at [40]; Juan Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment* (A/HRC/31/57) (5 January 2016) at [44].

<sup>46</sup> Public Health Association of Australia, *Abortion in Australia: Public Health Perspectives* (2005); Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), 'Queensland Abortion Law Reform' (Media Statement, undated), <https://www.ranzcog.edu.au/news/Queensland-abortion-law-reform>.

<sup>47</sup> Evidence in the *Fertility Control Clinic v Melbourne City Council* [2015] VSC 424 (26 August 2015) (including expert evidence). A Humphries, "Stigma, Secrecy and Anxiety in Women Attending for an Early Abortion" (Masters Thesis, University of Melbourne, 2011).

<sup>48</sup> Jamie Berry & Ian Munro, "'Remorseless' Recluse Gets Life', *The Age* (20 November 2002) <https://www.theage.com.au/articles/2002/11/19/1037697662403.html>.

<sup>49</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas); *Health (Patient Privacy) Amendment Act 2015* (ACT); *Public Health and Wellbeing (Safe Access Zone) Amendment Act 2015* (Vic); *Termination of Pregnancy Law Reform Act 2017* (NT) pt 3.

<sup>50</sup> See discussion in Victorian Parliament, referencing the evidence put before the Supreme Court by East Melbourne's Fertility Control Clinic, (2 September 2015) [http://www.parliament.vic.gov.au/images/stories/daily-hansard/Council\\_2015/Council\\_AugDec\\_2015\\_Daily\\_2\\_September\\_2015.pdf](http://www.parliament.vic.gov.au/images/stories/daily-hansard/Council_2015/Council_AugDec_2015_Daily_2_September_2015.pdf).

<sup>51</sup> Public comments inciting discrimination and violence are also inconsistently sanctioned across Australia. Civil and criminal anti-vilification protections exist on the basis of sexuality and gender identity in the ACT and Queensland, civil protections on the basis of homosexual status and transgender status in NSW, and civil anti-vilification and offensive conduct protections exist on the basis of sexual orientation, gender identity and intersex status in Tasmania. See *Criminal Code 2002* (ACT) s 750; *Discrimination Act 1991* (ACT) s 67A; *Anti-Discrimination Act 1977* (NSW) s 49ZTA, 49ZXC, 49ZT, 49ZXB; *Anti-Discrimination Act 1991* (QLD) s 131A, 124A; *Anti-Discrimination Act 1998* (Tas) ss 16 & 19.

<sup>52</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights* (2015) 14-21 [https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015\\_Web\\_Version.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf); Australian Research Centre in Sex, Health and Society, La Trobe University, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people* (2010) 39 [http://www.glhv.org.au/files/wti3\\_web\\_sml.pdf](http://www.glhv.org.au/files/wti3_web_sml.pdf).

<sup>53</sup> Tiffany Jones and Western Australian Equal Opportunity Commission, *A report about discrimination and bullying on the grounds of sexual orientation and gender identity in Western Australian education* (2012) 11  
[http://www.aeusa.asn.au/tiffany\\_jones\\_report.pdf](http://www.aeusa.asn.au/tiffany_jones_report.pdf); William Leonard et al, *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians*, La Trobe University (2012)  
<http://www.glhv.org.au/files/PrivateLives2Report.pdf>. See also, the 'gay panic defence' in *Lindsay v The Queen* [2015] HCA 16.

<sup>54</sup> Ibid, *Writing Themselves in* 3, 39.

<sup>55</sup> National LGBTI Health Alliance, *The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia* (2016)  
<https://lgbtihealth.org.au/statistics/>.

<sup>56</sup> Ibid. For example, 1 in 2 young bisexual women aged 16 to 27 reported being treated for a mental disorder in the past three years.

<sup>57</sup> Trans Pathways, *The Mental Health Experiences and Care Pathways of Trans Young People* (2017)  
<https://www.telethonkids.org.au/globalassets/media/documents/brain--behaviour/trans-pathwayreport-web2.pdf>; OII Australia, *New publication "Intersex: Stories and Statistics from Australia"* (2016).

<sup>58</sup> National LGBTI Health Alliance, *LGBTI People: Mental Health & Suicide* (revised 2<sup>nd</sup> Edition) (2013)  
<https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0258-lgbti-mental-health-and-suicide-2013-2nd-edition.pdf?sfvrsn=2>.

<sup>59</sup> See *The Yogyakarta Principles, Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2006) Principle 3  
[http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf).

<sup>60</sup> The Australian Capital Territory and South Australia have reformed laws to remove the requirement that a person undergo "sex reassignment surgery" to change the sex marker on a birth certificate document. The Commonwealth, Australian Capital Territory, New South Wales and South Australia provided limited recognition for sex and gender outside the categories of male and female.

<sup>61</sup> Australian Government, *Australian Government Guidelines on the Recognition of Sex and Gender* (2015). We note concerns raised about these guidelines – see e.g. The Sex and Gender Advisory Group (24 September 2015)  
<https://lgbtihealth.org.au/wp-content/uploads/2015/10/FOR-DISTRIBUTION-AGD-Sex-and-Gender-Guidelines-Review-Advisory-Group-Endorsement-Letter.pdf>.

<sup>62</sup> *Births Deaths and Marriages Registration Act 1995* (NSW); *Births, Deaths and Marriages Act 1996* (VIC); *Births Deaths and Marriages Registration Act 2003* (Qld); *Gender Reassignment Act 2000* (WA); *Births, Deaths and Marriages Registration Act 1996* (SA); *Births, Deaths and Marriages Registration Act 1999* (Tas); *Births, Deaths and Marriages Registration Act* (NT); *Births, Deaths and Marriages Registration Act* (NT); *Births, Deaths and Marriages Registration Act 1997* (ACT).

<sup>63</sup> OII Australia (now Intersex Human Rights Australia), *Contribution to the List of Issues Prior to Reporting to the Committee against Torture on Australia's Sixth Periodic Report* (June 2016)  
<https://ihra.org.au/wp-content/uploads/2016/06/OII-Australia-LoIPR-CAT-2016.pdf>.

<sup>64, 65, 70</sup> Australian Senate Community Affairs Reference Committee, *Involuntary or Coerced Sterilisation of Intersex People in Australia - Second Report* (2013)  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Involuntary\\_Sterilisation/Sec\\_Report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index).

<sup>66</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on Costa Rica* (CEDAW/C/CRI/CO/5-6) (29 July 2011) at [40].

<sup>67</sup> See e.g. Committee on the Elimination of Discrimination against Women, *Concluding observations on Costa Rica* (CEDAW/C/CRI/CO/5-6), (29 July 2011) at [40], *Concluding observations on Germany* (CEDAW/C/DEU/CO/7-8) (3 March 2017) at [23] and [24], *Concluding observations on Ireland* (CEDAW/C/IRL/CO/6-7) (3 March 2017) at [24] and [25]; *Concluding observations on Switzerland* (CEDAW/C/CHE/CO/4-5) (18 November 2016) at [24] and [25]; *Concluding Observations on France* (CEDAW/C/FRA/CO/7-8) (25 July 2016) at [18] and [19].

<sup>68</sup> Above n 5, Committee on Economic, Social and Cultural Rights at [49]–[50]; Human Rights Committee at [25]–[36].

<sup>69</sup> *The Yogyakarta Principles plus 10: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles* (10 November 2017)  
[http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf), Principle 32.

Human Rights Law Centre Ltd  
Level 17, 461 Bourke Street  
Melbourne VIC 3000

Tel: + 61 3 8636 4450

Web: [www.hrlc.org.au](http://www.hrlc.org.au)

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Equal rights for women and girls in Australia

